

SESSION LAWS
OF
HAWAII
PASSED BY THE
TWENTY-SIXTH STATE LEGISLATURE
STATE OF HAWAII

REGULAR SESSION
2012

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PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Regular Session of 2012.

The text of the laws is printed in full except for laws repealing existing statutes. With the exception of certain obvious typographical errors which have been corrected, the text of the laws as enacted is followed.

Statutory material that is being repealed is either bracketed or bracketed and stricken. New material is indicated by underscoring. As authorized by Section 23G-16.5, Hawaii Revised Statutes, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

Charlotte A. Carter-Yamauchi
Revisor of Statutes

Honolulu, Hawaii
July 15, 2012

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D – Democrats	24
R – Republicans	1

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R – Republicans	8

TABLE OF CONTENTS

	PAGE
List of Acts, 2012 Regular Session	x
Text of Acts, 2012 Regular Session	1
Proposed Constitutional Amendments	1118
Committee Reports on Bills Enacted and Proposed Constitutional Amendments	1124
Tables Showing Effect of Acts	
A. Sections of Hawaii Revised Statutes (HRS) Affected.....	1130
B. Acts of Session Laws of Hawaii (SLH) Affected	1135
C. Section of Hawaiian Homes Commission Act of 1920 (HHCA) Affected	1136
D. Sections of State Constitution Affected	1136
General Index	1137

LIST OF ACTS

2012 REGULAR SESSION

ACT NO.	BILL NO.	SUBJECT	PAGE
1	H.B. 608	Organ donor transplant program; emergency appropriation	1
2	S.B. 239	Tobacco settlement special fund; John A. Burns school of medicine.....	3
3	S.B. 809	University of Hawaii; revenue bond emergency appropriation	4
4	H.B. 905	Purchases of health and human services; delivery plans	6
5	H.B. 2002	Legislative appropriations	7
6	H.B. 2096	Employment security benefits.....	9
7	H.B. 2437	Voting system contract; emergency appropriation	13
8	H.B. 2438	Claims against the State; emergency appropriation	13
9	H.B. 2769	State or county public safety agency.....	17
10	H.B. 1743	Drivers licenses; category 3 license	17
11	S.B. 3024	Publicly traded corporations; voting requirements for mergers	18
12	H.B. 2639	Armed forces experience; college academic credit.....	19
13	H.B. 2576	Employment security	19
14	H.B. 2573	Apprenticeship program	20
15	S.B. 2783	Public trust lands conveyance.....	24
16	H.B. 1858	Workforce demographic profile	31
17	H.B. 2841	Uniform interstate depositions and discovery act.....	32
18	H.B. 1746	Condominiums; installation of separate utility meters	33
19	H.B. 2143	Hawaii public housing authority; resident advisory board.....	35
20	S.B. 2648	Campaign funds; awarding scholarships for higher education.....	36
21	S.B. 2971	Penal code; definition of vehicle	37
22	S.B. 2518	Driver's licenses; active duty military personnel and dependents	37
23	S.B. 2650	Promoting a controlled substance in public housing projects ...	38
24	H.B. 1965	Pharmacists; continuing education	39
25	S.B. 2503	Animal cruelty; equines	40
26	H.B. 2181	Elections; office of Hawaiian affairs	42
27	H.B. 2587	Sailing school vessels	42
28	H.B. 2533	Child protective act; aggravated circumstances.....	43
29	H.B. 2600	Controlled substances; herbal incense and bath salts.....	44
30	H.B. 1964	Insurance; cancer treatment plans	51
31	S.B. 2808	Med-QUEST.....	52
32	H.B. 994	Motor vehicle insurance; covered loss deductibles	53
33	H.B. 2162	Uniform commercial code; secured transactions	54
34	S.B. 3029	Statutory revision bill.....	71
35	H.B. 2441	Child support enforcement; employment reporting requirements.....	84
36	H.B. 2439	EUTF; credited service.....	84
37	H.B. 2458	Nonprofit corporations; conversion of assets	85
38	H.B. 2492	EUTF; medicare part B rate adjustments	86
39	H.B. 2578	Advisory council for community services	88
40	H.B. 2547	Emergency appropriation; general assistance program	89
41	H.B. 2539	Adult perpetrator record checks.....	90
42	S.B. 2229	Pharmacists; influenza vaccinations	92
43	H.B. 2628	Landlord tenant code; exemption of dorm management companies	96
44	H.B. 1698	Qualified community rehabilitation programs	97
45	H.B. 2254	Pretax transportation program for public employees.....	97
46	S.B. 2337	Airport concessions; revenue enhancing improvements	99
47	S.B. 2874	Airport revenue	100
48	H.B. 1744	Salary and leave reductions for state executives, etc. clarified ...	103
49	S.B. 2671	Labor relations board staff	105

ACT NO.	BILL NO.	SUBJECT	PAGE
50	H.B. 2602	Prisoners -- uniform application of detention credit	106
51	H.B. 2598	Pre-sentence diagnosis and report	107
52	H.B. 2508	Collection agencies; exempt out-of-state operation	108
53	H.B. 2023	Center for nursing fee	111
54	S.B. 2759	Securities; general amendments	111
55	S.B. 2752	Electric utilities; power purchase agreements	120
56	H.B. 2591	Accreted lands	122
57	S.B. 2850	Grounded vessels	124
58	S.B. 2758	Business registration amendments	124
59	H.B. 1772	Violation of privacy	132
60	S.B. 2803	Child care contract proposals	133
61	S.B. 2772	State public library system	134
62	S.B. 2796	Public assistance; death benefit amount	135
63	S.B. 2774	Government publications	137
64	H.B. 1874	Vog task force	138
65	H.B. 2410	Military presence in Hawaii; memorandum of understanding	139
66	S.B. 2768	Surplus lines brokers and insurance producers	141
67	S.B. 2224	Motor vehicle tax lien and encumbrance record	155
68	S.B. 2588	Limitation of actions; sexual offenses against children	156
69	S.B. 2877	Harbors fireboat maintenance	158
70	S.B. 2872	Relocation of utility facilities	158
71	S.B. 2698	Information privacy and security council	159
72	S.B. 2751	Retirement systems board of trustees	160
73	H.B. 2133	Domestic violence awareness month	160
74	H.B. 1868	Telecommunications rate charges	161
75	S.B. 2818	Dead human bodies	162
76	S.B. 2866	Offender reentry office	164
77	S.B. 2865	Federal reimbursement maximization special fund	167
78	S.B. 2822	Electric device recycling task force	168
79	S.B. 2167	Land surveying; landscape architect	169
80	S.B. 2009	Homeowners insurance claims information	171
81	S.B. 2013	Dental hygienists	171
82	S.B. 1312	Legacy land conservation commission	172
83	S.B. 2397	Fire sprinklers	173
84	S.B. 2386	Native Hawaiian roll commission	173
85	S.B. 2842	Discrimination in real property transactions	174
86	S.B. 2709	Vital statistics	176
87	S.B. 2820	Advisory commission on drug abuse and controlled substances	177
88	S.B. 3031	Liquor licensees; timely suppression of unlawful conduct	178
89	S.B. 2747	Electric vehicle parking	180
90	S.B. 2110	'Ulu'ulu: The Henry Ku'ualoha Giugni Moving Image Archive of Hawai'i	181
91	H.B. 2537	Human services; records disclosure per court order	182
92	S.B. 2084	Mammograms; annual screening	184
93	S.B. 2126	Health care services	185
94	S.B. 2247	Electronic communications; emergency disclosures	199
95	S.B. 2798	Health care insurers; member list reports	203
96	S.B. 2828	Early intervention coordinating council	205
97	S.B. 3003	Geothermal resources	206
98	S.B. 3025	Affordable housing credits	214
99	H.B. 425	Stabilization of electric utility rates	215
100	H.B. 1754	Absentee ballots	216
101	S.B. 112	Spaceport license appropriation	218
102	H.B. 2013	Mixed martial arts	219
103	S.B. 2220	Boiler and elevator special fund	219
104	H.B. 2251	Absentee ballots	223
105	S.B. 2804	Interagency council on homelessness	224

ACT NO.	BILL NO.	SUBJECT	PAGE
106	H.B. 2012	Supplemental appropriations act of 2012	228
107	H.B. 1800	Judiciary supplemental appropriations act of 2012	389
108	H.B. 1838	General obligation bonds authorization	394
109	H.B. 2495	Collective bargaining -- units 2, 3, 4, 8.....	400
110	S.B. 2324	Appropriations, collective bargaining units 2, 3, 4, 13	402
111	S.B. 2323	Appropriations, collective bargaining units 2, 3, 4, 6, and 13....	405
112	S.B. 1083	Appropriation, collective bargaining unit 7	406
113	S.B. 2375	Agricultural-based commercial operations	407
114	S.B. 2646	Agricultural and aquacultural building permits	412
115	H.B. 1764	Residency of appointive officers.....	415
116	H.B. 2476	Claims against the State	416
117	H.B. 2848	Public safety	419
118	S.B. 2508	Campaign reports.....	420
119	S.B. 2228	Pseudoephedrine	421
120	S.B. 2797	Psychotropic medications	424
121	S.B. 2632	Time shares	425
122	S.B. 2695	Livestock feed pilot project	431
123	H.B. 2429	Board of agriculture	433
124	H.B. 2244	Agriculture; inspection compliance agreements	434
125	H.B. 1524	Agricultural theft	436
126	H.B. 2296	Bear gallbladders and bile byproducts	439
127	H.B. 1942	Electronic importer manifest program	440
128	H.B. 1943	Plant quarantine detector dog program	441
129	H.B. 2100	Bee hive research	442
130	S.B. 2115	Charter schools	443
131	S.B. 2116	Charter school implementation and transition coordinator	474
132	S.B. 1382	Higher education act of 1965, audit	476
133	S.B. 2540	Education; general amendments.....	478
134	H.B. 2513	School health aides; administration of medication	494
135	S.B. 2773	Libraries	495
136	H.B. 2232	Pelvic examinations	496
137	S.B. 243	Western interstate commission for higher education.....	497
138	S.B. 2740	Hula mae bond authorization ceiling	499
139	S.B. 2776	Prisons and prisoners	499
140	H.B. 2515	Probation reports	505
141	H.B. 2599	Reentry intake service centers.....	507
142	H.B. 2601	Service of process	508
143	S.B. 2056	Probation reports	514
144	S.B. 3001	Live wild or feral deer.....	515
145	S.B. 2277	Habitat conservation plans; safe harbor agreements.....	517
146	H.B. 2589	Abandoned vessels	517
147	H.B. 2595	Special purpose revenue bonds; dams and reservoirs	521
148	H.B. 2681	Electric gun use accreditation	531
149	H.B. 2593	Emergency rules	532
150	H.B. 1972	Historic preservation program.....	533
151	H.B. 1726	Energy systems development special fund	535
152	S.B. 1269	Employees retirement system, compensation defined.....	535
153	H.B. 2487	Employees retirement system.....	536
154	H.B. 2127	Special purpose revenue bonds; Hawaii Preparatory Academy	541
155	S.B. 745	Special purpose revenue bonds; Seawater Air Conditioning LLC.....	542
156	S.B. 2466	Nursing facility sustainability program	542
157	S.B. 2810	Employment, domestic services	549
158	S.B. 2833	Developmental and intellectual disabilities	555
159	H.B. 2302	Temporary civil service exemptions, public housing construction employees	564
160	H.B. 755	Public housing eviction process	568
161	H.B. 2540	Child care licensing and registration special fund	570

ACT NO.	BILL NO.	SUBJECT	PAGE
162	S.B. 2821	Developmental or intellectual disabilities	571
163	S.B. 2800	Child care licensing	574
164	H.B. 1398	Public housing authority	574
165	S.B. 2785	Interisland electric transmission cable systems	576
166	S.B. 2787	Electric reliability standards	584
167	H.B. 2150	Photovoltaic systems in agricultural districts	591
168	S.B. 2746	Electric vehicle incentives	595
169	H.B. 2873	Pacific International Space Center for Exploration Systems	596
170	H.B. 2319	Venture accelerator funding program	600
171	S.B. 490	Tourism special fund; expanded visa programs	602
172	S.B. 2281	Environmental impact statements	604
173	H.B. 2265	Procurement code	608
174	H.B. 2529	Hawaiian home lands procurements	611
175	S.B. 2790	Hawaiian home lands pilot project	612
176	S.B. 2858	Information practices decisions	615
177	S.B. 2859	Boards and commissions meetings	618
178	S.B. 2545	Early learning	620
179	H.B. 2605	Income tax -- conformance to the Internal Revenue Code	627
180	S.B. 2868	Tax clearance fees	628
181	H.B. 2326	Tax review commission	629
182	H.B. 1875	Foreclosures	630
183	H.B. 2375	Mortgage rescue fraud prevention act	689
184	H.B. 1705	Tax exemption for nonprofit public water systems	690
185	H.B. 1695	Income tax; erroneous claims	695
186	S.B. 240	Physician workforce assessment fees	696
187	S.B. 596	Hawaii health corps	697
188	H.B. 2740	Naptha fuel tax	700
189	S.B. 2947	Taxation	701
190	H.B. 2226	Automated victim notification system	703
191	S.B. 2419	Unlawful use of Hawaii identification card or driver's license	708
192	H.B. 2295	Cyberbullying	710
193	S.B. 2001	State plan, promoting indigenous geothermal energy resources	711
194	H.B. 2871	West Maui ocean recreation management area advisory committee	712
195	S.B. 2933	Ocean safety	713
196	H.B. 1879	One call center; exemption of pest control companies	715
197	H.B. 2273	Concussion educational program	717
198	S.B. 155	Athletic trainers	719
199	S.B. 2435	Electronic services for visually impaired	725
200	H.B. 2415	Medicaid buy-in task force	725
201	H.B. 2374	Office of language access	727
202	S.B. 2737	Public meetings	733
203	H.B. 2004	Unlawful operation of motor carriers	735
204	H.B. 2751	Disrespect of a house of the legislature	736
205	S.B. 223	Domestic abuse orders	736
206	H.B. 238	Temporary restraining orders; first time violations	737
207	H.B. 626	Uniform collaborative law act	739
208	H.B. 2175	Ethics and task force members	746
209	H.B. 2623	Real property transfers	749
210	H.B. 2454	Rap back program	751
211	H.B. 2448	Medicaid	752
212	S.B. 2221	Child pornography	758
213	S.B. 2222	Promoting minor-produced sexual images	759
214	S.B. 2486	Terroristic threatening -- pets or livestock	760
215	H.B. 304	Grants and subsidies	760
216	S.B. 2576	Prostitution	766
217	H.B. 2275	Hospital sustainability program	768
218	S.B. 3010	Bridge rehabilitation projects	774

ACT NO.	BILL NO.	SUBJECT	PAGE
219	S.B. 2238	General excise tax, nonprofits.....	776
220	H.B. 2328	Estate and generation skipping tax.....	777
221	H.B. 2290	Children and youth day.....	791
222	S.B. 2780	Information technology procurements.....	792
223	H.B. 1892	Reapportionment commission.....	793
224	H.B. 2266	Information technology steering committee.....	794
225	H.B. 1755	Electronic voter registration.....	794
226	H.B. 461	Uniform military and overseas voters act.....	798
227	S.B. 2939	Special purpose revenue bonds; St. Francis Healthcare System of Hawaii.....	803
228	S.B. 2383	Special purpose revenue bonds; Queen's Health Systems.....	804
229	S.B. 2748	Unclaimed property.....	805
230	S.B. 2952	Special purpose revenue bonds; Le Jardin Academy.....	806
231	H.B. 2347	General obligation bonds for revenue-producing undertakings.....	807
232	H.B. 2644	Preferential water rates for agricultural activities.....	809
233	H.B. 1968	Reduced ignition propensity cigarette program.....	809
234	H.B. 2099	Workers' compensation.....	810
235	S.B. 2678	Honouliuli park site advisory group.....	810
236	S.B. 2318	Uniform adult guardianship and protective proceedings jurisdiction act.....	812
237	S.B. 2779	Aging and disability resource centers.....	820
238	S.B. 2320	Kupuna care program.....	823
239	S.B. 2335	Special management use permits.....	825
240	S.B. 2239	Economic development programs.....	827
241	S.B. 2739	Small business regulatory review board.....	828
242	S.B. 2236	Special purpose revenue bonds, information technology; Clearcom, Inc.....	830
243	H.B. 2314	Convention center.....	838
244	H.B. 1295	Unlicensed contracting offenses.....	840
245	H.B. 2502	Mortgage servicers.....	842
246	H.B. 1543	Motor vehicle warranty work.....	844
247	H.B. 2257	Professional and vocational licensing; non-resident military spouse.....	846
248	H.B. 2258	Professional and vocational licensing; military education and training credit.....	847
249	H.B. 2409	Abusive lending practices; protection of military members.....	848
250	S.B. 2767	Insurance guaranty associations.....	849
251	S.B. 2766	Insurance entities.....	871
252	S.B. 2763	Mortgage loan originators.....	877
253	S.B. 2765	Captive insurance companies.....	883
254	S.B. 1276	Basic health program study.....	898
255	S.B. 2103	Nursing, physician assistants.....	899
256	S.B. 3062	Life settlements.....	901
257	S.B. 3002	Real estate brokers and salespersons.....	925
258	S.B. 2769	Insurance rates and filings.....	927
259	H.B. 2526	Broadband reporting.....	932
260	S.B. 2412	Payment to subcontractors.....	934
261	H.B. 2574	Labor and industrial relations appeals board, hearing notices.....	935
262	H.B. 2584	Workers compensation, notice of insurance.....	936
263	H.B. 2264	Employment security; contribution rate schedule.....	937
264	S.B. 2261	Weed and seed program.....	941
265	H.B. 2564	Volunteer medical assistance services.....	942
266	H.B. 2776	Care home liability insurance.....	943
267	H.B. 2569	Civil unions; general amendments.....	944
268	H.B. 1953	Emergency medical services funding.....	950
269	S.B. 2778	Childhood obesity prevention task force.....	951
270	S.B. 1500	Anatomical gifts.....	953
271	S.B. 3006	Motor vehicle tires.....	953

ACT NO.	BILL NO.	SUBJECT	PAGE
272	S.B. 2813	Disability and communication access board special fund	954
273	S.B. 2816	Hospital licensing	955
274	S.B. 2958	Kapiolani Medical Center for Women and Children grant	956
275	S.B. 2825	Hawaii immunization registry	956
276	S.B. 2827	Trauma system special fund	959
277	H.B. 2553	Building design for disabled persons	960
278	H.B. 2656	Air pollution control; crematoriums	962
279	H.B. 2664	Hawaii health systems corporation; public-private partnership	962
280	S.B. 2344	Hawaii health authority	965
281	H.B. 609	Hawaii Medical Center - East	966
282	H.B. 2398	Public land development corporation; stadium facilities special fund	967
283	H.B. 2883	Makaha valley flood study	970
284	S.B. 2378	Legacy lands	971
285	H.B. 2568	Department of health; background checks of employees	973
286	S.B. 2745	Climate change policy	978
287	S.B. 2402	Night sky protection system	981
288	H.B. 2806	Aha moku advisory committee	984
289	H.B. 2682	Commercial activities in private marinas	987
290	S.B. 3008	Family court postings	990
291	H.B. 2686	Emergency access, shelter, and subsistence during disasters	991
292	H.B. 1791	Motor vehicles, manslaughter or negligent homicide convictions	992
293	H.B. 1788	Computer fraud	994
294	H.B. 1181	False claims against the State	996
295	H.B. 297	Probation services fees	1004
296	H.B. 1967	Medical claim conciliation	1004
297	S.B. 2630	Liquor commission; noise control pilot program	1016
298	S.B. 824	Motor carrier indemnification agreements	1018
299	H.B. 1765	Counties, criminal history record checks	1019
300	H.B. 2179	Auditor	1023
301	H.B. 679	Liability of firearms owners	1024
302	H.B. 1925	Liquor manufacturer license	1025
303	H.B. 302	Probation services special fund	1026
304	H.B. 2491	Hawaii employer-union health benefits trust fund	1026
305	H.B. 2248	Hawaii Pacific University; special purpose revenue bonds	1027
306	H.B. 2242	Veterinarians	1028
307	H.B. 1974	Burial of service members	1030
308	H.B. 1054	Public library system	1032
309	S.B. 2534	School facilities special fund	1035
310	S.B. 2506	Civil identification cards	1036
311	S.B. 2871	Commercial drivers' licenses	1045
312	S.B. 2873	Environmental impact statements	1048
313	S.B. 2876	Harbors civil violations system	1050
314	H.B. 2608	Driver's license reciprocity committee	1053
315	H.B. 1957	Health care privacy harmonization act	1054
316	H.B. 1666	Negligent homicide	1056
317	H.B. 2626	Traffic violations; safe routes to school	1057
318	H.B. 2030	Emergency vehicles stopped on highways	1060
319	H.B. 2113	Aerial luminaries	1061
320	H.B. 2684	Zipper lanes	1062
321	S.B. 2655	Portable electronics insurance	1063
322	H.B. 246	Victim witness assistance program grant	1068
323	S.B. 2742	Hawaii community development district	1068
324	H.B. 2169	Public accountancy; peer review	1074
325	H.B. 1777	Criminal process records	1082
326	H.B. 2078	Transient accommodations; local contact	1086
327	H.B. 2320	Ignition interlock devices	1088
328	H.B. 280	False labeling of Hawaii grown coffee	1108
329	S.B. 2341	Agricultural tourism activities	1111

PROPOSED CONSTITUTIONAL AMENDMENTS

2012 REGULAR SESSION

BILL NO.	SUBJECT	PAGE
H.B. 2594	Special purpose revenue bonds; dams and reservoirs	1118
S.B. 650	Retired judges; appointment as temporary judges	1120

**Session Laws of Hawaii
Passed By The
Twenty-Sixth State Legislature
Regular Session
2012**

ACT 1

H.B. NO. 608

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The legislature finds that organ transplantation is a life-saving therapy for many critically ill patients with end-stage diseases. More than one hundred ten thousand patients are on the national organ transplant waiting list; four hundred seven of those patients are Hawaii residents.

Funding is critical to maintain a federally-recognized stage 3 chronic kidney disease program that focuses on prevention for disparate populations in Hawaii. Without operational organ transplant services in the State, patients with end-stage diseases must register on transplant waiting lists for mainland transplant centers and many of these patients will face a longer waiting time to receive a donor organ at a transplant center on the mainland than at a transplant center in Hawaii. The increased waiting time for an organ may mean that the sickest of those patients may not survive long enough for a donor organ to become available. In addition to the increased waiting time, many waitlisted patients in the State will have the additional burden of relocating to other areas of the country, away from friends and family, while awaiting a donor organ and during their recovery.

An emergency appropriation is necessary to preserve and save the lives of individuals combating organ failure by providing them with access to organ transplantation in the State and giving them quality care and treatment throughout their operation and recovery.

National Kidney Foundation of Hawaii provides a federally-recognized chronic kidney disease management program in Hawaii. It meets the eligibility requirements of section 42F-103, Hawaii Revised Statutes, for recipients of grants and subsidies. The Queen's Medical Center is establishing a kidney and liver transplant program in Hawaii. It also meets the eligibility requirements of section 42F-103, Hawaii Revised Statutes, for recipients of grants and subsidies, with the exception of approval as a member of the Organ Procurement and Transplantation Network/United Network for Organ Sharing with designations as a liver transplant program and a kidney and living donor kidney transplant

ACT 1

program, for which it has applied and which it expects to receive approval on or before February 15, 2012.

The purpose of this Act is to appropriate emergency funds, subject to dollar-for-dollar private matching funds, to support services by The Queen's Medical Center to perform kidney and liver transplants in Hawaii, and by the National Kidney Foundation of Hawaii to maintain its chronic kidney disease management program.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2011-2012 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for The Queen's Medical Center to support services to perform kidney and liver transplants in Hawaii; provided that:

- (1) No funds appropriated under this Act shall be expended unless matched dollar-for-dollar with private funds; and
- (2) Any private matching funds obtained for the purposes of this Act shall have priority in being encumbered over public funds.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2011-2012 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for National Kidney Foundation of Hawaii to maintain its chronic kidney disease management program; provided that:

- (1) No funds appropriated under this Act shall be expended unless matched dollar-for-dollar with private funds; and
- (2) Any private matching funds obtained for the purposes of this Act shall have priority in being encumbered over public funds.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. This Act shall take effect upon its approval; provided that section 3 of this Act shall take effect on the date on which The Queen's Medical Center obtains approval as a member of the Organ Procurement and Transplantation Network/United Network for Organ Sharing with designations as a liver transplant program and a kidney and living donor kidney transplant program, and provided that a copy of the document evidencing the approval is delivered to the department of health.

(Approved February 4, 2012.)

ACT 2

S.B. NO. 239

A Bill for an Act Relating to the Hawaii Tobacco Settlement Special Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the John A. Burns school of medicine was authorized under Act 264, Session Laws of Hawaii 2007, to use a portion of Hawaii tobacco settlement special fund moneys for annual operating expenses to support the school's operations and train and graduate new physicians. This authorization was repealed on June 30, 2011.

The purpose of this Act is to re-instate the authorization that allows the John A. Burns school of medicine to use a portion of Hawaii tobacco settlement special fund moneys for annual operating expenses until 2015 while reducing the portion of fund moneys by one per cent per fiscal year starting with fiscal year 2013-2014 until the fiscal year ending on June 30, 2015.

SECTION 2. Section 328L-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The fund shall be used for the purpose of receiving, allocating, and appropriating the tobacco settlement moneys as follows:

- (1) Fifteen per cent shall be appropriated into the emergency and budget reserve fund under section 328L-3; provided that for fiscal years 2012 and 2013, this percentage shall be deposited into the general fund;
- (2) Twenty-five per cent shall be appropriated to the department for purposes of section 328L-4;
- (3) Six and one-half per cent shall be appropriated into the Hawaii tobacco prevention and control trust fund under section 328L-5; provided that for fiscal years 2012 and 2013, this percentage shall be deposited into the general fund; ~~and~~
- (4) Twenty-eight per cent shall be appropriated into the university revenue-undertakings fund created in section 304A-2167.5 to be applied ~~[solely]~~ to the payment of the principal of and interest on, and to generate required coverage, if any, for revenue bonds issued by the board of regents of the University of Hawaii to finance the cost of construction of a university health and wellness center, including a new medical school facility, to be situated on the island of Oahu, for the succeeding fiscal year; and the payment of annual operating expenses incurred by the new medical school facility; provided that starting with fiscal year 2013-2014, the amount to be appropriated to the university revenue-undertakings fund shall be reduced to twenty-seven per cent; provided further that starting with fiscal year 2014-2015, the amount shall be reduced to twenty-six per cent; provided further that any moneys in excess of the amount required [to pay principal of and interest on, and to generate required coverage, if any, for such revenue bonds in any fiscal year,] under this paragraph shall be transferred [as follows:] in the succeeding fiscal year to the [emergency and budget reserve fund under section 328L-3;] general fund; and
- (5) Twenty-five and one-half per cent shall be deposited to the credit of the state general fund; provided that the one per cent reduction in the appropriation to the university revenue-undertakings fund for fiscal year 2013-2014 under paragraph (4) shall be deposited to the

credit of the general fund in addition to the twenty-five and one-half per cent of Hawaii tobacco settlement special fund moneys deposited pursuant to this paragraph; provided further that the one per cent reduction in the appropriation to the university revenue-undertakings fund for fiscal year 2014-2015 under paragraph (4) shall be deposited to the credit of the general fund in addition to the twenty-six and one-half per cent of Hawaii tobacco settlement special fund moneys deposited pursuant to this paragraph.¹
in the succeeding fiscal year.”

SECTION 3. The University of Hawaii shall prepare a detailed accounting of all revenues and expenditures relating to:

- (1) Moneys appropriated into the university revenue-undertakings fund established under section 304A-2167.5, Hawaii Revised Statutes; and
- (2) Any moneys used for the operating costs of the medical school facility.

This accounting information shall be submitted to the legislature no later than twenty days prior to the convening of the regular sessions of 2013, 2014, and 2015.

SECTION 4. The University of Hawaii shall submit a report to the legislature detailing its financial plan to fund the operating expenses of the John A. Burns school of medicine beginning July 1, 2015, when it is no longer authorized to use a portion of the Hawaii tobacco settlement special fund moneys. The financial plan shall include an itemized list of all means of funding the John A. Burns school of medicine’s operating expenses.

This report shall be submitted to the legislature no later than twenty days prior to the convening of the regular sessions of 2013, 2014, and 2015.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval, and shall be repealed on June 30, 2015; provided that section 328L-2, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of Act 264, Session Laws of Hawaii 2007.

(Approved February 13, 2012.)

Note

1. So in original.

ACT 3

S.B. NO. 809

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with article VII, section 9, of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to increase the University of Hawaii’s authorization to issue revenue bonds from a total principal amount not to exceed \$200,000,000 to a total principal amount not to exceed \$300,000,000,

for the purpose of financing the University of Hawaii's priority capital facility construction, renovation, and repair projects that qualify for revenue bonds.

An increase in the University of Hawaii's authority to issue revenue bonds is necessary to enable the University of Hawaii to continue addressing its growing capital facility needs, including new project construction and the major repair and maintenance backlog of its older facilities, as well as to take advantage of opportunities for acquisitions, projects, and financing that may arise.

For example, the Culinary Institute of the Pacific at Diamond Head is fully entitled and phase I is ready to go out to bid for construction. Federal and private funds have been secured to match the revenue dollars needed for the phase I classrooms and laboratories. If the ability to issue the revenue bonds is delayed until after July 1, 2012, there may be a negative impact on bid and interest costs and matching federal and private funds may be put at risk.

The passage of this Act will provide sufficient financial flexibility to the University of Hawaii system to obtain additional funding to continue to improve and maintain its facilities for the successful accomplishment of its core education and research mission at a time when current interest rates are favorable due to existing economic conditions. In addition, passage of this Act will provide employment opportunities for those whose jobs have been impacted by the economic downturn. This Act will put people back to work and will help to increase economic growth in the State.

SECTION 3. Act 161, Session Laws of Hawaii 2007, sections 6 and 7, as amended by Act 94, Session Laws of Hawaii 2009, section 2, are amended to read as follows:

"SECTION 6. The board of regents of the University of Hawaii, with the approval of the governor, is authorized to issue revenue bonds from time to time to finance, in whole or in part, the costs of construction or the costs of maintenance of any university project, including reserves therefor as the board of regents may direct. The total principal amount of the revenue bonds authorized by this Act shall not exceed [~~\$200,000,000;~~] \$300,000,000; provided that neither revenue bonds issued to refund revenue bonds heretofore issued, to the extent that such refunding revenue bonds do not exceed the principal amount of the revenue bonds being refunded, nor revenue bonds of the board outstanding at the effective date of this Act shall cause the amount of the above authorization to be decreased. The revenue bonds shall be issued pursuant to the provisions of part VI of chapter 304A, Hawaii Revised Statutes. The principal and interest on the revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid solely from and secured solely by the revenue of the university as defined in section 304A-2671, Hawaii Revised Statutes.

SECTION 7. There is appropriated out of the revenue bond proceeds authorized by this Act the sum of \$100,000,000 or so much thereof as may be necessary for fiscal year 2008-2009 to carry out the purposes of section 6 of this Act; provided that any unexpended and unencumbered balance of the appropriation shall not lapse at the end of fiscal year 2008-2009 and shall lapse instead on June 30, 2013.

There is also appropriated out of the revenue bond proceeds authorized by this Act, the sum of \$100,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 to carry out the purposes of section 6 of this Act; provided that any unexpended and unencumbered balance of the appropriation shall not lapse at the end of fiscal year 2009-2010 and shall lapse instead on June 30, 2015.

ACT 4

There is also appropriated out of the revenue bond proceeds authorized by this Act, the sum of \$100,000,000 or so much thereof as may be necessary for fiscal year 2011-2012 to carry out the purposes of section 6 of this Act; provided that any unexpended and unencumbered balance of the appropriation shall not lapse at the end of fiscal year 2011-2012 and shall lapse instead on June 30, 2017.

The sums appropriated shall be expended by the board of regents of the University of Hawaii."

SECTION 4. The University of Hawaii shall notify the legislature upon the issuance of the additional revenue bonds authorized by section 3 of this Act, including a detailed listing and description of all projects to be funded through the revenue bonds authorized pursuant to this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved February 13, 2012.)

ACT 4

H.B. NO. 905

A Bill for an Act Relating to Delivery of Government Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103F-203, Hawaii Revised Statutes, is amended to read as follows:

"[~~§103F-203~~] Collaboration Participation of providers. ~~[Provider participation in a state agency's efforts to plan or purchase health or human services, prior]~~ (a) Prior to [the] a state agency's release of a request for proposal under section 103F-402, at the request of the agency, a provider shall participate in the agency's development of a delivery plan for health and human services, including [the], as necessary:

- (1) The sharing of information on community needs, best practices, and providers' resources[;];
- (2) Evaluating efficiencies in delivering existing services and recommending strategies for eliminating gaps in service delivery; and
- (3) Recommending cost-efficient and effective service alternatives.

(b) A state agency may include a provision in a contract awarded under this chapter a requirement that the provider participate in planning pursuant to subsection (a); provided that notice of this requirement shall be provided in the request for proposals; and provided further that participation in planning pursuant to subsection (a) [shall be encouraged, and, as determined by rules,] shall not disqualify [~~providers~~] a provider from submitting responses to requests for proposals."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved February 15, 2012.)

ACT 5

H.B. NO. 2002

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Auditor, the Legislative Reference Bureau, the Ombudsman, and the Ethics Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,464,744 or so much thereof as may be necessary to the senate for the following expenses:

- (1) The sum of \$6,477,244 for defraying any and all session and nonsession expenses of the senate up to and including June 30, 2013, including the 2012 regular session, twenty-sixth legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2012 and 2013 regular sessions;
- (2) The sum of \$900,000 for defraying the expenses of the legislative information system for cost items such as hardware, software, consultants, installation, materials, supplies, and other related costs associated with the legislative information system that have been or will be incurred; and
- (3) The sum of \$87,500 for defraying the cost of the legislative broadcasting program to pay for the production and distribution of television broadcasts of legislative proceedings.

The sum appropriated in this section shall be expended by the senate.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,569,287 or so much thereof as may be necessary to the house of representatives for the following expenses:

- (1) The sum of \$9,793,363 for defraying any and all session and nonsession expenses of the house of representatives up to and including June 30, 2013, including the 2012 regular session, twenty-sixth legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2012 and 2013 regular sessions;
- (2) The sum of \$688,424 for defraying the expenses of the legislative information system for cost items such as hardware, software, consultants, installation, materials, supplies, and other related costs associated with the legislative information system that have been or will be incurred; and
- (3) The sum of \$87,500 for defraying the cost of the legislative broadcasting program to pay for the production and distribution of television broadcasts of legislative proceedings.

The sum appropriated in this section shall be expended by the house of representatives.

SECTION 3. Payment of expenses of the senate during the interim between the 2012 and 2013 regular sessions shall be made only with the approval of the president of the senate, and payment of expenses of the house of repre-

ACT 5

sentatives during the interim between the 2012 and 2013 regular sessions shall be made only with the approval of the speaker of the house of representatives.

SECTION 4. Before January 16, 2013, the senate and the house of representatives shall each have their accounts audited, and a full report of the respective audits shall be presented to the senate and to the house of representatives convening on January 16, 2013.

SECTION 5. Unless otherwise prescribed by law, the expenses of any member of the legislature while traveling abroad on official business of the legislature shall be \$145 a day as authorized by the president of the senate and the speaker of the house of representatives.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,663,849 or so much thereof as may be necessary to the office of the auditor for the following expenses:

- (1) The sum of \$2,513,849 for defraying the expenses of the office of the auditor during fiscal year 2012-2013; and
- (2) The sum of \$150,000 during fiscal year 2012-2013 for:
 - (A) Performing special studies;
 - (B) Improving capabilities for planning, programming, and budgeting;
 - (C) Fulfilling other special requests made of the auditor by the legislature or jointly by the president of the senate and the speaker of the house of representatives;
 - (D) Legislative studies and contractual services for those studies; and
 - (E) Such other purposes as may be determined by the joint action of the president of the senate and the speaker of the house of representatives.

The sum appropriated in this section shall be expended by the auditor.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,550,828 or so much thereof as may be necessary to the office of the auditor during fiscal year 2012-2013 to be deposited into the audit revolving fund established pursuant to section 23-3.6, Hawaii Revised Statutes.

SECTION 8. There is appropriated out of the audit revolving fund the sum of \$6,000,000 or so much thereof as may be necessary to the office of the auditor during fiscal year 2012-2013 for the office to conduct or complete its audit functions as provided by law.

The sum appropriated in this section shall be expended by the auditor.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,983,970 or so much thereof as may be necessary to the legislative reference bureau for defraying the expenses of the legislative reference bureau during fiscal year 2012-2013, including equipment relating to computer systems programming and operations.

The sum appropriated in this section shall be expended by the legislative reference bureau.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,017,875 or so much thereof as may be necessary

to the office of the ombudsman for defraying the expenses of the office during fiscal year 2012-2013.

The sum appropriated in this section shall be expended by the ombudsman.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$849,531 or so much thereof as may be necessary to the office of the state ethics commission for defraying the expenses of the office during fiscal year 2012-2013.

The sum appropriated in this section shall be expended by the state ethics commission.

SECTION 12. Except for moneys in the audit revolving fund, as of the close of business on June 30, 2013, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 13. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 14. This Act shall take effect upon its approval.

(Approved February 15, 2012.)

ACT 6

H.B. NO. 2096

A Bill for an Act Relating to Employment Security.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 383-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) [In the case of an individual whose benefit year begins prior to January 5, 1992, the individual’s weekly benefit amount shall be, except as otherwise provided in this section, an amount equal to one twenty-fifth of the individual’s total wages for insured work paid during the calendar quarter of the individual’s base period in which such total wages were highest.] In the case of an individual whose benefit year begins after January 4, 1992, the individual’s weekly benefit amount shall be, except as otherwise provided in this section, an amount equal to one twenty-first of the individual’s total wages for insured work paid during the calendar quarter of the individual’s base period in which such total wages were highest. The weekly benefit amount, if not a multiple of \$1, shall be computed to the next higher multiple of \$1. If an individual’s weekly benefit amount is less than \$5, it shall be \$5. The maximum weekly benefit amount shall be determined annually as follows: On or before November 30 of each year the total remuneration paid by employers, as reported on contribution reports submitted on or before such date, with respect to all employment during the four consecutive calendar quarters ending on June 30 of the year shall be divided by the average monthly number of individuals performing services in the employment during the same four calendar quarters as reported on the contribution reports. The amount thus obtained shall be divided by fifty-two and the average weekly wage (rounded to the nearest cent) thus determined. [For benefit years beginning prior to January 1, 1992, two-thirds of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all claims for benefits filed by an individual qualifying for payment at the maximum weekly~~

ACT 6

benefit amount in the benefit year commencing on or after the first day of the calendar year immediately following the determination of the maximum weekly benefit amount.] For benefit years beginning January 1, 1992, but prior to January 1, 2008, and beginning again on January 1, 2012, but prior to April 1, 2012, then beginning again on January 1, 2013, seventy per cent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all claims for benefits filed by an individual qualifying for payment at the maximum weekly benefit amount in the benefit year commencing on or after the first day of the calendar year immediately following the determination of the maximum weekly benefit amount. For benefit years beginning January 1, 2008, and ending December 31, 2011, and beginning again on April 1, 2012, and ending December 31, 2012, seventy-five per cent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all claims for benefits filed by an individual qualifying for payment at the maximum weekly benefit amount in the benefit year commencing on or after the first day of the calendar year immediately following the determination of the maximum weekly benefit amount. The maximum weekly benefit amount, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.

(Column A) High Quarter Wages	(Column B) Basic Weekly Benefit	(Column C) Minimum Qualifying Wages	(Column D) Maximum Total Benefits in Benefit Year
\$ 37.50 - 125.00	\$ 5.00	\$ 150.00	\$ 130.00
125.01 - 150.00	6.00	180.00	156.00
150.01 - 175.00	7.00	210.00	182.00
175.01 - 200.00	8.00	240.00	208.00
200.01 - 225.00	9.00	270.00	234.00
225.01 - 250.00	10.00	300.00	260.00
250.01 - 275.00	11.00	330.00	286.00
275.01 - 300.00	12.00	360.00	312.00
300.01 - 325.00	13.00	390.00	338.00
325.01 - 350.00	14.00	420.00	364.00
350.01 - 375.00	15.00	450.00	390.00
375.01 - 400.00	16.00	480.00	416.00
400.01 - 425.00	17.00	510.00	442.00
425.01 - 450.00	18.00	540.00	468.00
450.01 - 475.00	19.00	570.00	494.00
475.01 - 500.00	20.00	600.00	520.00
500.01 - 525.00	21.00	630.00	546.00
525.01 - 550.00	22.00	660.00	572.00
550.01 - 575.00	23.00	690.00	598.00
575.01 - 600.00	24.00	720.00	624.00
600.01 - 625.00	25.00	750.00	650.00
625.01 - 650.00	26.00	780.00	676.00
650.01 - 675.00	27.00	810.00	702.00
675.01 - 700.00	28.00	840.00	728.00
700.01 - 725.00	29.00	870.00	754.00
725.01 - 750.00	30.00	900.00	780.00
750.01 - 775.00	31.00	930.00	806.00
775.01 - 800.00	32.00	960.00	832.00
800.01 - 825.00	33.00	990.00	858.00
825.01 - 850.00	34.00	1020.00	884.00
850.01 - 875.00	35.00	1050.00	910.00
875.01 - 900.00	36.00	1080.00	936.00

900.01 - 925.00	37.00	1110.00	962.00
925.01 - 950.00	38.00	1140.00	988.00
950.01 - 975.00	39.00	1170.00	1014.00
975.01 - 1000.00	40.00	1200.00	1040.00
1000.01 - 1025.00	41.00	1230.00	1066.00
1025.01 - 1050.00	42.00	1260.00	1092.00
1050.01 - 1075.00	43.00	1290.00	1118.00
1075.01 - 1100.00	44.00	1320.00	1144.00
1100.01 - 1125.00	45.00	1350.00	1170.00
1125.01 - 1150.00	46.00	1380.00	1196.00
1150.01 - 1175.00	47.00	1410.00	1222.00
1175.01 - 1200.00	48.00	1440.00	1248.00
1200.01 - 1225.00	49.00	1470.00	1274.00
1225.01 - 1250.00	50.00	1500.00	1300.00
1250.01 - 1275.00	51.00	1530.00	1326.00
1275.01 - 1300.00	52.00	1560.00	1352.00
1300.01 - 1325.00	53.00	1590.00	1378.00
1325.01 - 1350.00	54.00	1620.00	1404.00
1350.01 and over	55.00	1650.00	1430.00."

SECTION 2. Section 383-68, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Effective with calendar year 1992 and thereafter, before December 31 of the previous year the contribution rate schedule for the following calendar year shall be determined on the basis of the relationship between the most recent current reserve fund and the most recent adequate reserve fund, in accordance with this subsection and subsection (d).

- (1) Whenever the ratio of the current reserve fund to the adequate reserve fund is greater than 1.69, contribution rate schedule A shall apply.
- (2) Whenever the ratio of the current reserve fund to the adequate reserve fund is 1.3 to 1.69, contribution rate schedule B shall apply.
- (3) Whenever the ratio of the current reserve fund to the adequate reserve fund is 1.0 to 1.29, contribution rate schedule C shall apply.
- (4) Whenever the ratio of the current reserve fund to the adequate reserve fund is .80 to .99, contribution rate schedule D shall apply.
- (5) Whenever the ratio of the current reserve fund to the adequate reserve fund is .60 to .79, contribution rate schedule E shall apply.
- (6) Whenever the ratio of the current reserve fund to the adequate reserve fund is .40 to .59, contribution rate schedule F shall apply.
- (7) Whenever the ratio of the current reserve fund to the adequate reserve fund is .20 to .39, contribution rate schedule G shall apply.
- (8) Whenever the ratio of the current reserve fund to the adequate reserve fund is less than .20, contribution rate schedule H shall apply.

Notwithstanding the ratio of the current reserve fund to the adequate reserve fund, contribution rate schedule D shall apply for calendar year 2010 and contribution rate schedule F shall apply for calendar [year] years 2011[-] and 2012."

SECTION 3. Section 383-128, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The moneys in the employment and training fund may be used for funding:

- (1) The operation of the state employment service for which no federal funds have been allocated;

- (2) Business-specific training programs to create a more diversified job base and to carry out the purposes of the new industry training program pursuant to section 394-8;
- (3) Industry or employer-specific training programs where there are critical skill shortages in high growth occupational or industry areas;
- (4) Training and retraining programs to assist workers who have become recently unemployed or are¹ likely to be unemployed;
- (5) Programs to assist residents who do not otherwise qualify for federal or state job training programs to overcome employment barriers; [and]
- (6) Training programs to provide job-specific skills for individuals in need of assistance to improve career employment prospects[-]; and
- (7) The payment of interest due on Title XII advances made under the provisions of section 1202(b) of the Social Security Act, as amended, to the unemployment compensation fund."

SECTION 4. Section 383-129, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to contributions determined by section 383-68, every employer, except an employer who has selected an alternative method of financing liability for unemployment compensation benefits pursuant to section 383-62, ~~[or an employer who has been assigned a minimum rate of zero per cent or the maximum rate of five and four-tenths per cent in accordance with section 383-68,]~~ shall be subject to an employment and training fund assessment at a rate of .01 per cent of taxable wages as specified in section 383-61. If interest is due on a Title XII advance under the provisions of section 1202(b) of the Social Security Act, as amended, the employment and training fund assessment shall be used to pay the interest due. The director shall have the discretion to determine the amount of the employment and training assessment rate for the calendar year 2012 in increments of .01 per cent. Notwithstanding any provisions of this chapter to the contrary, any amounts collected but not applied to interest payments due in 2012, shall not be returned retroactively to any employer and shall be retained in the employment and training fund."

SECTION 5. (a) The director of labor and industrial relations may utilize section 103-6, Hawaii Revised Statutes, or may borrow moneys from the federal government pursuant to title XII of the Social Security Act, to cover the insolvency of the unemployment compensation fund.

(b) The director of labor and industrial relations shall use the loan proceeds only to pay unemployment benefits pursuant to chapter 383, Hawaii Revised Statutes, and may not use the loan proceeds to pay for any other expenses such as administrative expenses.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval and shall apply retroactively to January 1, 2012; provided that on January 1, 2013, sections 3 and 4 of this Act shall be repealed and sections 383-128 and 383-129, Hawaii Revised Statutes, shall be reenacted in the form in which they read on December 31, 2010.

(Approved March 9, 2012.)

Note

1. Should be underscored.

ACT 7

H.B. NO. 2437

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to make an emergency appropriation to fund the voting system contract for the 2012 elections. Without an emergency appropriation the office of elections will not be able to fulfill its current voting system contract or conduct the 2012 elections. Additionally, the State of Hawaii will be out of compliance with its obligations under the Help America Vote Act of 2002, Public Law 107-252.

Title 42 United States Code section 15481 of the Help America Vote Act of 2002 mandates various voting system standards. The currently unfunded voting system contract will allow the State of Hawaii to meet those standards.

Further, title 42 United States Code section 15404(a)(7) of the Help America Vote Act of 2002 mandates, as a condition of the receipt of federal payments, the maintenance of expenditures of the recipient state for activities funded by federal payments at a level that is not less than the level of such expenditures maintained by the state for the fiscal year ending prior to November 2000. The level of such expenditures in fiscal year 1999-2000 was \$2,299,552. The State of Hawaii has always met this requirement. The present operating budget of the office of elections for fiscal year 2011-2012 is \$1,829,581. Unless supplemented by an emergency appropriation, the State of Hawaii will not meet this expenditure requirement, which will compromise prior and future federal funding.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,725,000 or so much thereof as is necessary, for fiscal year 2011-2012 for the purpose of funding the payment of the voting system contract for the 2012 elections.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved March 19, 2012.)

ACT 8

H.B. NO. 2438

A Bill for an Act Making Emergency Appropriations for Claims Against the State, its Officers, or its Employees.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Hawaii state constitution.

ACT 8

SECTION 2. A critical fiscal emergency exists. During the regular session of 2011, a request was made for funds to satisfy judgments and settlements of claims against the State for fiscal year 2010-2011, but those funds were not appropriated. Therefore, it is necessary to seek these emergency appropriations to satisfy those judgments and settlements of claims and to avoid further legal action and expense.

PART II

SECTION 3. The following sums or so much thereof as may be necessary for fiscal year 2011-2012 are appropriated out of the general revenues of the State of Hawaii to the department of the attorney general for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and entities, for claims against the State or its officers or employees for the overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amounts set forth opposite their names:

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:

AMOUNT

1. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:

Mediation of Hilo Judiciary Complex	\$ 2,141,098.00
Construction Claims	Settlement
SUBTOTAL:	\$ 2,141,098.00

2. DEPARTMENT OF EDUCATION:

In the Matter of the Arbitration Between Hawaii State Teachers Association, AFSCME Local 152, AFL-CIO and Kihei Public Charter School (Grievance of Marty Bender)	\$ 12,298.00 Settlement
Jemwai v. Keau, et al., Civil No. 09-1-0095-01, First Circuit	\$ 252,500.00 Settlement
John Doe Parent, et al. v. State of Hawaii, et al., Civil No. 10-1-0505-03, First Circuit	\$ 70,700.00 Settlement
McCauley v. Inouye, et al. Civil No. 07-01-206K, Third Circuit	\$ 136,350.00 Settlement
SUBTOTAL:	\$ 471,848.00

3. HAWAII HEALTH SYSTEMS CORPORATION:

United Public Workers AFSCME, Local 646, AFL-CIO and State of Hawaii, et al. S.P. No. 09-1-0305, First Circuit	\$ 19,511.73 Judgment
SUBTOTAL:	\$ 19,511.73

4. DEPARTMENT OF HEALTH:

Segundo v. Frederick, et al. Civil No. 08-1-0106, Third Circuit	\$ 328,250.00 Settlement
SUBTOTAL:	\$ 328,250.00

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

AMOUNT

5. DEPARTMENT OF HUMAN SERVICES:

Robinson, et al. v. Plourde, et al. Civil No. 04-00672 DAE-KSC, USDC	\$ 20,929.57 Order
Sound v. Koller, et al. Civil No. 09-00409 JMS-KSC, USDC	\$ 70,124.05 Settlement
SUBTOTAL:	\$ 91,053.62

6. DEPARTMENT OF LAND AND NATURAL RESOURCES:

Kinney v. Department of Land and Natural Resources, et al., Civil No. 03-1-0010, Fifth Circuit	\$ 54,169.39 Judgment
Santiago v. County of Kauai, et al. Civil No. 08-1-0210, Fifth Circuit	\$ 18,180.00 Settlement
SUBTOTAL:	\$ 72,349.39

7. DEPARTMENT OF PUBLIC SAFETY:

Botelho, et al. v. State of Hawaii, et al. Civil No. 06-00096 DAE-BMK, USDC	\$ 277,750.00 Settlement
Itagaki v. Frank, et al. Civil No. 09-00110 SOM-RLP, USDC	\$ 83,830.00 Settlement
Kuresa v. Frank, et al. Civil No. 09-1-0303-02, First Circuit	\$ 25,250.00 Settlement
Maier v. State of Hawaii, et al. Civil No. 10-00449 JMS-BMK, USDC	\$ 20,200.00 Settlement
Tenney v. State of Hawaii, et al. Civil No. 09-1-0190-01, First Circuit	\$ 150,995.00 Settlement
SUBTOTAL:	\$ 558,025.00

8. MISCELLANEOUS CLAIMS:

Tom Ishigo	\$ 1,852.64
Nicole T. Kelley	\$ 394.74
Paulette Yoshida	\$ 464.00
SUBTOTAL:	\$ 2,711.38
TOTAL (SECTION 3):	\$ 3,684,847.12

The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

PART III

SECTION 4. The following sums or so much thereof as may be necessary for fiscal year 2011-2012 are appropriated out of the state highway fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

ACT 8

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:

AMOUNT

DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:

Labinia v. State of Hawaii, et al.	\$ 909,000.00
Civil No. 07-1-0075-01, First Circuit	Settlement
Moulton, et al. v. Alamo Rental, et al.	\$ 909,000.00
Civil No. 08-1-0447(3), Second Circuit	Settlement
Requelman v. State of Hawaii, et al.	\$ 232,300.00
Civil No. 06-1-0366, Third Circuit	Settlement
SUBTOTAL:	\$ 2,050,300.00
TOTAL (SECTION 4)	\$ 2,050,300.00

The sums appropriated shall be expended by the department of transportation, highways division, for the purposes of this Act.

PART IV

SECTION 5. The following sums or so much thereof as may be necessary for fiscal year 2011-2012 are appropriated out of the state harbor special fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:

AMOUNT

DEPARTMENT OF TRANSPORTATION, HARBORS DIVISION:

Barba v. State of Hawaii, et al.	\$ 35,350.00
Civil No. 09-1-0470-02, First Circuit	Settlement
Lexington Insurance Company A/S/O/ Harry and Jeanette Weinberg Foundation, Inc. v. State of Hawaii, et al.	\$ 20,200.00
Civil No. 09-1-2864-12, First Circuit	Settlement
SUBTOTAL:	\$ 55,550.00
TOTAL (SECTION 5)	\$ 55,550.00

The sums appropriated shall be expended by the department of transportation, harbors division, for the purposes of this Act.

PART V

SECTION 6. The sums hereinabove may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in several amounts hereinabove set forth or in lesser amounts deemed appropriate, upon checks issued by the comptroller; provided departments shall obtain the approval of the attorney general before payment of any claim can be made.

SECTION 7. Payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which the statute applies.

SECTION 8. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2012, shall lapse to the credit of the respective fund from which the money was appropriated.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. This Act shall take effect upon its approval.

(Approved March 19, 2012.)

ACT 9

H.B. NO. 2769

A Bill for an Act Relating to Enhanced 911 Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 138-1, Hawaii Revised Statutes, is amended by amending the definition of "public safety agency" to read as follows:

"Public safety agency" means a functional division of ~~[a governmental entity]~~ the State or a county that provides or has authority to provide, or a private entity contracted by a ~~[governmental entity]~~ state or county agency that provides, firefighting, law enforcement, ambulance, medical, or other emergency services."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 3, 2012.)

ACT 10

H.B. NO. 1743

A Bill for an Act Relating to Driver Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person operating the following category or combination of categories of motor vehicles shall be examined as provided in section 286-108 and duly licensed by the examiner of drivers:

- (1) Mopeds;
- (2) Motorcycles and motor scooters;
- (3) Passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants, and trucks and vans having a gross vehicle weight rating of ~~[fifteen]~~ eighteen thousand pounds or less; and

ACT 11

- (4) All of the motor vehicles in category (3) and any vehicle that is not a commercial motor vehicle.

A school bus or van operator shall be properly licensed to operate the category of vehicles that the operator operates as a school bus or van and shall comply with the standards of the department of transportation as provided by rules adopted pursuant to section 286-181."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 4, 2012.)

ACT 11

S.B. NO. 3024

A Bill for an Act Relating to Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 414-313, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) With respect to corporations incorporated before July 1, 1987, at such meeting, a vote of the shareholders shall be taken on the proposed plan. [The]

If the plan involves a merger of a publicly traded corporation with or into a direct or indirect subsidiary corporation, of which all of the outstanding shares of each class are owned directly or indirectly by the publicly traded corporation, subsection (e) shall apply as if each party to the merger was incorporated on or after July 1, 1987. Otherwise, the plan shall be approved upon receiving the affirmative vote of the holders of three-fourths of all the issued and outstanding shares of stock having voting power even though their right to vote is otherwise restricted or denied by the articles, bylaws, or resolutions of any such corporation. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control; provided that the lesser proportion shall be not less than the proportion set forth in subsection (e).

As used in this section, "publicly traded corporation" means any corporation listed on a national securities exchange."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 9, 2012.)

ACT 12

H.B. NO. 2639

A Bill for an Act Relating to Higher Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 304A-802, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is established at the university and the community colleges a college-credit equivalency program. The purpose of this program is to award college credits to students who are enrolled in a degree or certificate program at the university or at a community college and who have successfully completed, at a high school, business school, trade school, adult education school, or military training program, courses that are equivalent to courses offered for credit in the University of Hawaii system. The program shall also award credits for professional experience gained through service in the United States armed forces. Credits may also be awarded for work or other experiences at the discretion of the university.

(b) The university shall be responsible for the establishment of policies and procedures to administer the program. In this regard, the university, among other things, shall prepare and make public the following:

- (1) The list of the high school, business school, trade school, and adult education school courses for which college credits may be earned;
- (2) The number of credits that may be earned for each course; ~~and~~
- (3) The minimum standards or grades necessary to earn college credits~~[-]; and~~
- (4) A learning assessment or other criteria to determine college-level learning gained during service in the United States armed forces.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved April 9, 2012.)

ACT 13

H.B. NO. 2576

A Bill for an Act Relating to Employment Security Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 383-69, Hawaii Revised Statutes, is amended to read as follows:

“**§383-69 Procedure for rate determination.** The department of labor and industrial relations, as soon as is reasonably possible in each period, shall make its classification of employers for ~~[such]~~ the period and notify each employer of the employer’s rate of contributions for ~~[such]~~ the period as determined pursuant to sections 383-63 to 383-69. The determination shall become conclusive and binding upon the employer unless~~[-]~~ the employer appeals the determination by filing a written notice of appeal within fifteen days after the mailing of notice ~~[thereof]~~ of the determination to the employer’s last known address~~[-]~~ or in the absence of mailing within fifteen days after the delivery of the notice to

ACT 14

the employer, the employer files an application for review and redetermination, setting forth the employer's reasons therefor. If the department grants the review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing.]. The appeal shall be heard by the referee in accordance with applicable provisions of sections 383-38 and 383-39 but no employer shall have standing, in any proceeding involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to sections 383-31 to 383-43; provided that the services on the basis of which the benefits were found to be chargeable did not constitute services performed in employment for the employer and only ~~[in the event that]~~ if the employer was not a party to the determination, redetermination, or decision, or to any other proceedings under this chapter in which the character of the services was determined. ~~[The employer shall be promptly notified of the department's denial of the employer's application, or of the department's redetermination, both of which]~~ The referee's determination shall become final unless a proceeding for judicial review in the manner provided in chapter 91 is commenced in the circuit court of the judicial circuit in which the employer resides or has the employer's principal place of business or in the circuit court of the first judicial circuit. ~~[The proceedings shall be heard in a summary manner and shall be given precedence over all other civil actions, except for proceedings arising under section 383-41 and the workers' compensation law of the State.]~~ An appeal may be taken from the decision of the circuit court to the intermediate appellate court, subject to chapter 602."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved April 10, 2012.)

ACT 14

H.B. NO. 2573

A Bill for an Act Relating to Apprenticeship.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-20, Hawaii Revised Statutes, is amended to read as follows:

"§26-20 Department of labor and industrial relations. The department of labor and industrial relations shall be headed by a single executive to be known as the director of labor and industrial relations.

The department shall administer programs designed to increase the economic security, physical and economic well-being, and productivity of workers, and to achieve good labor-management relations, including the administration of workers' compensation, employment security, apprenticeship training, wage and hour, and industrial relations laws. The department shall also have the function of developing, preparing, and disseminating information on employment, unemployment, and general labor market conditions.

The labor and industrial relations appeals board provided for in chapters 371 and 386 is placed within the department of labor and industrial relations for administrative purposes. The respective functions, duties, and powers, subject to

the administrative control of the director of labor and industrial relations, and the composition of the board shall be as heretofore provided by law.

There shall be within the department of labor and industrial relations a board to be known as the Hawaii labor relations board as provided for in section 89-5, which shall exercise powers and duties in accordance with chapters 89, 377, and 396. The director shall have general administrative supervision over the board, but shall not have the power to supervise or control the board in the exercise of its powers or duties.

The functions of mediation heretofore exercised by the commission of labor and industrial relations existing immediately prior to November 25, 1959, as provided in section 371-10, shall be exercised by the governor or the governor's designated agent.

The director may establish within the department of labor and industrial relations a committee to be known as the state apprenticeship council which shall sit in an advisory capacity to the director of labor and industrial relations on matters within the jurisdiction of the department of labor and industrial relations relating to apprenticeship programs. The membership and organization of the council shall be determined by the director."

SECTION 2. Section 372-1, Hawaii Revised Statutes, is amended to read as follows:

"§372-1 Application of chapter. This chapter shall apply to a person, ~~[firm, corporation, or craft] employer, association, committee, or organization~~ only after such person, ~~[firm, corporation, or craft] employer, association, committee, or organization~~ has voluntarily elected to conform with its provisions."

SECTION 3. Section 372-2, Hawaii Revised Statutes, is amended to read as follows:

"§372-2 Definitions. As used in this chapter:

"Apprentice" means a ~~[person participating, through employment, in an approved schedule of work experience supplemented by related instruction and who is a party to an apprenticeship agreement registered with the department in accordance with this chapter.]~~ worker at least sixteen years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation in accordance with the standards of apprenticeship established by this chapter.

"Apprenticeship agreement" ~~[means]~~ is a written agreement [which conforms to standards established under this chapter and is entered into] between an apprentice and [(1) an employer, (2) an association of employers, (3) an organization of employees, or (4) a joint committee representing employers and employees.] either the apprentice's program sponsors or an apprenticeship committee acting as agent for the program sponsors. The apprenticeship agreement shall be approved by the director.

"Apprenticeship committee" means a group of persons designated by the sponsors to administer an apprenticeship program. An apprenticeship committee may either be a joint committee comprising an equal number of representatives of the employers and employees represented by bona fide collective bargaining agents, or a non-joint committee, known as a unilateral or group non-joint committee, that has employer representatives and may include employees, but does not have a bona fide collective bargaining agent as a participant.

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations.

“Sponsor” means any person, employer, association, committee, or organization operating an apprenticeship program and in whose name the program is, or is to be, registered and approved.”

SECTION 4. Section 372-3, Hawaii Revised Statutes, is amended to read as follows:

“§372-3 Standards ~~[for agreements.]~~ of apprenticeship. [“Standards for apprenticeship agreements” are as follows:

- (1) ~~A statement of the trade or craft to be taught and the required months or hours for completion of apprenticeship which shall not be less than twelve months or two thousand hours of reasonably continuous employment;~~
- (2) ~~A statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;~~
- (3) ~~A statement of the number of hours to be spent in related instruction which shall not be less than one hundred and forty four hours per year; provided that the department of labor and industrial relations may, in the best interest of apprenticeship, reduce the hours of related instruction;~~
- (4) ~~A statement that apprentices shall be not less than sixteen years of age;~~
- (5) ~~A statement of the progressively increasing scale of wages to be paid the apprentice;~~
- (6) ~~Provision for a period of probation during which the director of labor and industrial relations shall be directed to terminate an apprenticeship agreement at the request in writing of any party thereto;~~
- (7) ~~Provision that after the probationary period the director may terminate an apprenticeship agreement upon agreement of the parties thereto;~~
- (8) ~~Provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where the differences cannot be adjusted locally or in accordance with the established trade procedure;~~
- (9) ~~Provision to specify the ratio of apprentice to journey worker;~~
- (10) ~~Provision that if an employer is unable to fulfill the employer’s obligation under the apprenticeship agreement, the employer may transfer the obligation to another employer;~~
- (11) ~~Such additional standards as may be prescribed in accordance with this chapter.~~

An apprentice who, prior to entering¹ an agreement, has had training or experience or both in the trade or craft in which the apprentice is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee with the approval of the director.] Standards of apprenticeship that conform to the federal regulations shall be established by the director. Apprenticeship program sponsors that meet the standards of apprenticeship may seek approval and registration by the director.”

SECTION 5. Section 372-4, Hawaii Revised Statutes, is amended to read as follows:

"§372-4 [Apprenticeship] State apprenticeship council. The director [~~of labor and industrial relations may~~] shall establish within the department [~~of labor and industrial relations a committee to be known as~~] the state apprenticeship council which shall [~~sit~~] serve in an advisory capacity to the director on matters within the jurisdiction of the department relating to apprenticeship programs. The membership and organization of the council shall be determined by the director. The council shall be composed of persons familiar with apprenticeable occupations, and shall include an equal number of representatives of employers and employee organizations, and shall include public members who shall not number in excess of the number named to represent either employers or employee organizations. The members of the council shall be appointed and removed at the pleasure of the director. [~~The director or the director's subordinate officer in charge of the apprenticeship program shall act as secretary of the council.~~]"

SECTION 6. Section 372-5, Hawaii Revised Statutes, is amended to read as follows:

"§372-5 Powers and duties of director. The director [~~of labor and industrial relations~~] shall:

- (1) Establish standards of apprenticeship and for apprenticeship agreements in conformity with this chapter;
- (2) Provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;
- (3) Encourage and promote [~~the making of~~] apprenticeship [~~agreements conforming to the standards established by this chapter;~~] in apprenticeable occupations, including occupations in high growth and high demand industries;
- (4) [~~Register such apprenticeship agreements as are in the best interest of apprenticeship and~~] Approve and register apprenticeship programs and apprenticeship agreements which conform to the standards established by this chapter;
- (5) Keep [~~a record~~] records of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;
- (6) Terminate or cancel [~~any~~] apprenticeship agreements in accordance with the agreements[;], and deregister apprenticeship programs;
- (7) Bring about the settlement of differences arising out of the apprenticeship agreement where the differences cannot be otherwise adjusted locally;
- (8) Issue such rules and regulations as may be necessary to carry out the intent and purpose of this chapter;
- (9) Appoint personnel as are necessary in the execution of the functions required under this chapter; [~~and~~]
- (10) Perform other duties as are necessary to carry out the intent and purpose of this chapter[;] or rules pertaining to apprenticeship; and
- (11) Accord reciprocal approval to apprenticeship programs and agreements that are registered in other states by the federal Office of Apprenticeship or a recognized agency of a state if such reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval shall meet the wage and hour provisions and apprentice ratio standards of this state."

ACT 15

SECTION 7. Section 372-6, Hawaii Revised Statutes, is amended to read as follows:

“§372-6 Related instruction [~~and coordination of instruction~~]. Related instruction for apprentices~~], coordination of instruction with job experiences, and the selection]~~ and training of teachers and coordinators for the instruction shall be the responsibility of the community [~~college division~~] colleges of the University of Hawaii~~[-] system.~~”

SECTION 8. Section 372-7, Hawaii Revised Statutes, is amended to read as follows:

“§372-7 [~~Joint apprenticeship committees.~~] Apprenticeship committee. ~~[Local joint apprenticeship committees may be approved by the director of labor and industrial relations in any trade, group of trades, or in trade areas, whenever the apprentice training needs of the trade or group of trades justifies the establishment of the committees. The joint apprenticeship committees shall be composed of an equal number of persons known to represent the interest of the employers and employees, respectively.]~~ Subject to the review of the director and in accordance with the standards established by this chapter and rules adopted by the director, ~~[the]~~ apprenticeship committees shall ~~[devise standards for apprenticeship agreements and]~~ give assistance to the operation and further development of apprenticeship in their respective ~~[trade]~~ occupation and localities.”

SECTION 9. Section 372-8, Hawaii Revised Statutes, is amended to read as follows:

“§372-8 State-federal cooperation. The department ~~[of labor and industrial relations]~~ may promote the administration of this chapter by accepting and utilizing information, services, and facilities made available to it by the federal~~[committee on apprenticeship;]~~ Advisory Committee on Apprenticeship; and the department shall cooperate with the federal ~~[committee on apprenticeship]~~ Advisory Committee on Apprenticeship to the fullest extent consistent with this chapter.”

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved April 10, 2012.)

Notes

1. Prior to amendment “into” appeared here.
2. So in original.

ACT 15

S.B. NO. 2783

A Bill for an Act Relating to the Public Trust Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1978, the Constitution of the State of Hawaii was amended to include article XII, sections 4, 5, and 6, which established the office of Hawaiian affairs and its board of trustees.

Sections 4, 5, and 6 of the State Constitution provide:

SECTION 4. The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.

SECTION 5. There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are Hawaiians, as provided by law. The board members shall be Hawaiians. There shall be not less than nine members of the board of trustees; provided that each of the following Islands have one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The board shall select a chairperson from its members.

SECTION 6. The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians; to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board.

In Trustees of the Office of Hawaiian Affairs v. Yamasaki, 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii Supreme Court concluded that the issue of what constitutes the portion of the income and proceeds derived from the public land trust for the office of Hawaiian affairs pursuant to article XII, section 6 of the Hawaii Constitution, is a political question for the legislature to determine.

In response to the Yamasaki decision, the legislature enacted Act 304, Session Laws of Hawaii 1990, to clarify the extent and scope of the State's obligation to provide a portion of the funds derived from the public land trust to the office of Hawaiian affairs.

On September 12, 2001, the Hawaii Supreme Court ruled in Office of Hawaiian Affairs v. State of Hawaii, 96 Haw. 388, 31 P.3d 901 (2001), that Act 304 was effectively repealed by its own terms, so that it was necessary for the legislature to specify what portion of which funds, from which lands the office of Hawaiian affairs was to receive under the State Constitution.

In its decision, the Supreme Court affirmed Yamasaki, observing:
[T]he State's obligation to native Hawaiians is firmly established in our constitution. How the State satisfies that constitutional obligation requires policy decisions that are primarily within the authority and expertise of the legislative branch. As such, it is incumbent upon the legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the ceded lands trust. See Haw. Const. art. XVI, §7. . . .
. . . we trust that the legislature will re-examine the State's constitutional obligation to native Hawaiians and the purpose of HRS § 10-13.5 and enact legislation that most effectively and responsibly meets those obligations.

Office of Hawaiian Affairs v. State of Hawaii, 96 Haw. at 401, 31 P.3d at 914 (citations omitted)

One of the purposes of this Act is to resolve and extinguish, finally and completely, any and all claims, disputes and controversies the office of Hawaiian affairs, or any other person or entity claiming by, through, or under the office, has asserted or raised, or could otherwise assert or raise, relating to the portion of the income and proceeds from the public land trust lands under sections 4 and 6 of article XII of the State Constitution or any related statute or act, the office of Hawaiian affairs received between November 7, 1978, up to and including June 30, 2012.

Another purpose of this Act is to effectively and responsibly fulfill the constitutional obligation to native Hawaiians under article XII, sections 4 and 6, of the State Constitution between November 7, 1978, up to and including June 30, 2012, by re-examining the amount of money the office of Hawaiian affairs received under article XII, section 6 of the Constitution, determining whether the office received what it should have received as its share of the income and proceeds from public land trust lands between 1978 and 2012, and providing additional resources to the office in the form of fee simple title to certain parcels of land to completely and finally fulfill the State's constitutional obligations relating to the office of Hawaiian affairs' portion of the income and proceeds from the public land trust lands under article XII, sections 4 and 6, of the State Constitution or any related statute or act, between November 7, 1978, up to and including June 30, 2012.

The legislature recognizes that the governor and the office of Hawaiian affairs have reached an agreement with respect to conveyances of land and all issues relating to the office of Hawaiian affairs' portion of the income and proceeds from the public land trust lands under sections 4 and 6 of article XII of the Constitution, between November 7, 1978, up to and including June 30, 2012.

The legislature finds that the agreement between the State and the office of Hawaiian affairs represents a joint recommendation as to the policy the legislature should adopt, to satisfy the State's constitutional obligations to native Hawaiians under article XII, sections 4 and 6 of the Constitution for the period between November 7, 1978, up to and including June 30, 2012, relating to the office of Hawaiian affairs' portion of the income and proceeds from the public land trust lands. Conveyance of the fee simple interest to the lands the governor and the trustees of the office of Hawaiian affairs identified for conveyance will allow the State to effectively and responsibly meet said constitutional obligations to native Hawaiians.

This Act, therefore, is an expression of legislative policy, not a settlement or a contract. This legislation is a legislative act without distinction from any other legislative act. As it is neither a settlement nor a contract, it can give rise to no lawsuits or claims other than an action to compel compliance with this Act's terms, nor to any claim that any future legislation is barred in any way, or leads to liability in any way, because it somehow conflicts with a settlement, settlement agreement, contract, or the provisions of this Act.

SECTION 2. Notwithstanding any other law to the contrary, the fee simple interest to the following parcels of land with the existing improvements thereon (hereinafter "the Properties") (but not including submerged land, accreted land, or any land makai of the shoreline), is conveyed to the office of Hawaiian affairs as grantee, as of July 1, 2012, as is, where is:

- (1) Lots 1, 2, 3, 4, 5, 6(portion), and 9 of File Plan 2471 filed at the Bureau of Conveyances, State of Hawaii, on February 23, 2010;
- (2) TMK (1) 2-1-15-61; and

(3) TMK (1) 2-1-15-51.

As directed by the attorney general, the appropriate boards, agencies, officers, and employees of the State shall (1) prepare and execute deeds warranting title only, and such other instruments appropriate and necessary to convey fee title and interest to the above-listed parcels with all existing improvements, to the office of Hawaiian affairs, as grantee, and (2) record the deeds and such other instruments within a reasonable period of time after the effective date of this Act, in the land court or bureau of conveyances, as appropriate. The aforesaid executed deeds and other instruments shall be delivered to the office by the State no later than ____ days after they are recorded. As these are conveyances in which the State and its agencies are the only parties, the tax imposed by section 247-1, Hawaii Revised Statutes, shall not apply to them.

For purposes of this section and this Act, “as is, where is” means that the office of Hawaiian affairs is accepting the Properties in their existing condition as of March 1, 2012, the close of the office’s period for due diligence, without representations or warranties of any kind or nature. Except as set forth in the aforesaid deeds, the State makes no warranty or representation of any kind or nature, either express or implied, or arising by operation of law, including, but not limited to, any warranty of quantity, quality, condition, habitability, reliability, merchantability, workmanlike construction, suitability or fitness for a particular purpose, about the parcels of real property described in this section, any building or other improvement located on those parcels of land, any environmental contamination or conditions of those parcels of land, and the soil conditions related to those parcels of land.

The office of Hawaiian affairs has completed all due diligence investigations of the parcels necessary to satisfy itself as to the physical, environmental, economic and legal conditions relating to the parcels of land, and has indicated that it relied solely on the information it secured from its due diligence, and not on any information provided by or on behalf of the State to determine whether it wished to accept and acquire title to those parcels of land. All claims and liabilities against the State, if any, which the office of Hawaiian affairs has, may have had, or may have in the future, regarding any injury, loss, cost, damage or liability, including reasonable attorney’s fees, concerning the physical, environmental, soil, economic and legal conditions of the Properties, are released, waived and extinguished.

The Properties are and shall remain (even after conveyance to the office) under the jurisdiction and authority of the Hawaii community development authority, with respect to zoning, land use conditions and all other matters over which the authority has jurisdiction and authority to act. If in the future, the jurisdiction and authority over zoning and land use conditions over the Properties is transferred to, changed to, or vested in another department or agency of the State, then the Properties shall be under the jurisdiction and authority of such other department or agency.

The conveyances required to be made by this section shall not and do not include the rights of native tenants, or any of the State’s rights to minerals and metallic mines, including all geothermal rights, submerged lands, surface or ground water, or the State’s regulatory and ownership rights (if any) over, or to historic properties, aviation artifacts, burial sites, and prehistoric and historic remains under chapter 6E, Hawaii Revised Statutes.

The Properties conveyed shall be and remain subject to all encumbrances (whether or not of record), the rights of native tenants, leases, contracts, agreements, permits, easements, profits, licenses, rights-of-way or other instruments applicable to any of the Properties effective or on-going on the effective date of this Act unless they expire or are terminated pursuant to their respective terms.

These rights and encumbrances shall be set forth in the deeds conveying the Properties to the office or set forth in a license or similar agreement, a memorandum of which may be recorded concurrently with the deeds conveying the Properties to the office. Effective July 1, 2012, every reference to the present titleholder or the head of the department or agency in each such instrument, if the titleholder is a department or an agency, shall be construed as a reference to the office of Hawaiian affairs or its board of trustees.

The Properties shall be subject to all laws, except sections 206E-8, 206E-10, 206E-34, Hawaii Revised Statutes, and as otherwise provided in this Act, provided that the Hawaii community development authority may acquire by condemnation, pursuant to chapter 101, Hawaii Revised Statutes, easements, rights-of-way, rights of entry, or other rights of access in favor of lands adjoining the Properties conveyed that are under the control and management of public agencies, provided the office of Hawaiian affairs is paid just compensation for the same. The office of Hawaiian affairs shall administer the Properties in accordance with its duties under the Hawaii Constitution and as provided by law.

The instruments of conveyance executed and recorded pursuant to this Act shall specify that the office of Hawaiian affairs and any successor owner of any of the Properties shall cooperate with the State and its agencies to designate and grant such access rights and easements to the State or its agencies as may be reasonably necessary for the benefit and use of properties owned by the State or its agencies and which are adjacent to one or more of the Properties. Each of the instruments creating such access rights or granting such easements shall provide that the office, or any successor owner of the servient property, shall have the right to reasonably relocate any such access areas or easements so granted. The cost of initially identifying such access areas or designating and granting any such easements shall be paid by the State. The cost of relocating any such access areas or easements shall be paid by the office or any such successor owner, as the case may be. Each of the instruments creating such access rights or granting such easements also shall provide that the State and its agencies shall be responsible for only a reasonable share of the cost of maintaining any such access areas and easement areas, as the case may be, and that the office, its tenants, licensees, concessionaires, successors, and assigns shall not be liable for injuries or damages arising from the use of such access areas or easement areas and caused by the acts or omissions of the State, its agencies or employees, or their invitees.

SECTION 3. The passage of this Act is in full satisfaction, resolution, and discharge of any and all claims, disputes, controversies, actions, causes of action, demands, claims for relief, liability, liabilities, costs, compensations, injuries, losses, damages or expenses of any kind or nature, whether known or unknown, contingent or uncertain, patent or latent, whether at law or in equity, now existing or hereafter arising, established or inchoate, including any claim or action under chapter 661, Hawaii Revised Statutes, or for breach of trust under chapter 673, Hawaii Revised Statutes, that have been asserted or could have been asserted, or could be asserted in the future against the State by the office of Hawaiian affairs or any other person or entity claiming by, through, or under the office, in any manner arising out of, growing out of, connected with or traceable either directly or indirectly to, concerning or in any way related to any right the office of Hawaiian affairs or any other person or entity claiming by, through, or under the office may have or may have had to the portion of income and proceeds, or any other tangible right, item, or benefit related to said income and proceeds, from the public land trust lands under sections 4 and 6 of article XII of the Constitution or any related statute or act, between November 7, 1978, up to and including June 30, 2012.

All claims, disputes, controversies, actions, causes of action, demands, claims for relief, liabilities, costs, compensations, injuries, losses, damages or expenses of any kind or nature, whether known or unknown, contingent or uncertain, patent or latent, whether at law or in equity, now existing or hereafter arising, established, or inchoate, including any claim or action under chapter 661, Hawaii Revised Statutes, or for breach of trust under chapter 673, Hawaii Revised Statutes, that have been asserted or could have been asserted, or could be asserted in the future against the State by the office or any other person or entity claiming by, through, or under the office, in any manner arising out of, growing out of, connected with or traceable either directly or indirectly to, concerning or in any way related to, any right the office of Hawaiian affairs or any other person or entity claiming by, through, or under the office may have or may have had to the portion of income and proceeds, or any other tangible right, item, or benefit related to said income and proceeds, from the public land trust lands under sections 4 and 6 of article XII of the Constitution or any related statute or act, between November 7, 1978, up to and including June 30, 2012, are released, waived, and forever discharged and extinguished.

Each and every claim or suit that is predicated in any way upon an act or omission that arises out of or is in any way related to any right the office of Hawaiian affairs, or any other person or entity claiming by, through or under the office may have or may have had to the income and proceeds, or any other tangible right, item, benefit or claim or action under chapter 661, Hawaii Revised Statutes, or for breach of trust under chapter 673, Hawaii Revised Statutes, related to said income and proceeds, from the public land trust lands under sections 4 and 6 of article XII of the Constitution or any related statute or act, between November 7, 1978, up to and including June 30, 2012, is forever extinguished and barred and may not be brought by the office, or by any other person or entity claiming by, through, or under the office.

The passage of this Act shall have the effect of *res judicata*, collateral estoppel, and claim and issue preclusion as to the office of Hawaiian affairs and all persons and entities claiming by, through, or under the office, and all claims, issues and defenses which have been at issue, or which could have been, or could in the future be, at issue, including any claim or action under chapter 661, Hawaii Revised Statutes, or for breach of trust under chapter 673, Hawaii Revised Statutes, whether brought against the State or its departments, agencies, officials, or employees, directly or indirectly, by subrogation, derivative or third party action, tender, federal action, or by any other means whatsoever, arising out of or in any way related to any right the office of Hawaiian affairs, or any other person or entity claiming by, through, or under the office, to the portion of income and proceeds, and/or any other tangible right, item, or benefit related to said income and proceeds, from the public land trust lands under sections 4 and 6 of article XII of the Constitution or any related statute or act between November 7, 1978, up to and including June 30, 2012.

The office of Hawaiian affairs shall not, cannot, and is forever prohibited and barred, now and in the future, from (1) asserting, arguing, or claiming that the office was entitled to more receipts than it received pursuant to Act 178, Session Laws of Hawaii 2006, or any other duly enacted law establishing the portion of the income and proceeds from the public land trust lands the office of Hawaiian affairs is to receive under sections 4 and 6 of article XII of the Constitution, between November 7, 1978, up to and including June 30, 2012, (2) bringing an action for breach of trust under chapter 673, Hawaii Revised Statutes, to contest or claim a larger portion of the income and proceeds, and/or any other tangible right, item, or benefit related to said income and proceeds, from the public land trust lands under sections 4 and 6 of article XII of the Constitution for itself or

its beneficiaries, or (3) asserting, arguing, or claiming that section 673-9, Hawaii Revised Statutes, does not bar a suit to contest or make a claim relating to the portion of the income and proceeds from the public land trust lands the office of Hawaiian affairs receives or is to receive under sections 4 and 6 of article XII of the Constitution. The prohibition and bar imposed by the immediately preceding sentence shall be applicable to any and all money transferred, or in the future to be transferred, to the office of Hawaiian affairs pursuant to Act 178, Session Laws of Hawaii 2006, or any other law enacted to give effect to the provisions of article XII, sections 4 and 6 of the Constitution relating to the office's portion of the income and proceeds from the public land trust lands under sections 4 and 6 of article XII of the Constitution, including, but not limited to, receipts from general leases, revocable permits, and licenses for the use of improved and unimproved parcels of public land trust lands, rents and fees for agricultural uses, rents and fees for retail, office, warehouse, medical and other uses of space in state-owned buildings and facilities, receipts from the sale of wood, rock, and other natural resources on public land trust lands, landing, docking and parking fees, rents and fees from the State's in-bond duty free, park, and other concessions, rents, fees, and reimbursements collected at state-operated hospitals and medical facilities, and fees and rents from the State's affordable housing development and rental public housing projects.

SECTION 4. To the extent that the State has made any waiver of sovereign immunity for a suit, claim, cause of action, or right of action regarding the amount of the income and proceeds the office of Hawaiian affairs is to receive from the public land trust lands pursuant to article XII, sections 4 and 6 of the Hawaii Constitution, that waiver is withdrawn.

SECTION 5. The State, while not admitting the validity of any claims, hereby resolves and satisfies all controversies and claims described in section 3 of this Act by the conveyance of the Properties described in section 2 of this Act.

SECTION 6. The Properties conveyed by this Act shall be deemed income and proceeds from the public land trust, as if the Properties had been paid out of the income and proceeds from the public land trust pursuant to article XII, section 6 of the State Constitution.

SECTION 7. Notwithstanding any other law to the contrary, the State, and the state officials who may have participated in the preparation of the provisions or the enactment of this Act, including the office of Hawaiian affairs, each of the members of its board of trustees, and its staff, shall not be subject to suit because of their participation, except if an action is brought to compel compliance with a provision of this Act, in which case the action shall be brought only against the State or the office of Hawaiian affairs, or any official necessary to compel compliance with a provision of this Act.

SECTION 8. If any provision of chapter 673, Hawaii Revised Statutes, is inconsistent with any provision of this Act, then the provisions of this Act shall prevail.

SECTION 9. (a) The provisions of this Act are not severable to the extent that if any provision of either section 2 or section 3 of this Act is held invalid or unenforceable by a final judgment of the Hawaii Supreme Court or the United States Supreme Court that resolves all issues, this Act in its entirety shall be invalid, all interests in the Properties conveyed pursuant to the provisions of

section 2 of this Act, shall be conveyed back to their respective grantors by the office of Hawaiian affairs.

(b) There is no waiver of sovereign immunity to bring any suit, claim, cause of action, or right of action to invalidate section 2 or 3 of this Act, or to enjoin their implementation or application, and to the extent any waiver of sovereign immunity for such a suit, claim, cause of action, or right of action exists, that waiver is withdrawn.

(c) Nothing in this Act limits the legislature's exclusive authority to enact laws.

SECTION 10. This Act shall take effect on July 1, 2012.

(Approved April 11, 2012.)

ACT 16

H.B. NO. 1858

A Bill for an Act Relating to Workforce Information.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 76, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§76- Executive branch workforce demographic profile. (a) The director of human resources development shall compile a profile on the workforce of the executive branch of the State that shall include:

- (1) Demographic data on the entire executive branch workforce covering both civil service employees hired through recruitment procedures based on merit and employees exempt from such procedures;
- (2) Breakouts of the data required by paragraph (1) for the systems administered by the department of human resources development, the board of education, the University of Hawaii board of regents, and the Hawaii health systems corporation, respectively; and
- (3) Information on the number of employees who are currently eligible for retirement and projected retirements for the succeeding five years.

(b) The director of human resources development shall submit an annual profile report to the legislature no later than twenty days prior to the convening of each regular session."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved April 12, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Uniform Interstate Depositions and Discovery Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT**

§ -1 **Short title.** This chapter may be cited as the Uniform Interstate Depositions and Discovery Act.

§ -2 **Definitions.** In this chapter:

“Foreign jurisdiction” means a state other than this State.

“Foreign subpoena” means a subpoena issued under authority of a court of record of a foreign jurisdiction.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

“Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to:

- (1) Attend and give testimony at a deposition;
- (2) Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or
- (3) Permit inspection of premises under the control of the person.

§ -3 **Issuance of subpoena.** (a) To request issuance of a subpoena under this section, a party shall submit a foreign subpoena to a clerk of court in the circuit in which discovery is sought to be conducted in this State. A request for the issuance of a subpoena under this chapter does not constitute an appearance in the courts of this State.

(b) When a party submits a foreign subpoena to a clerk of court in this State, the clerk, in accordance with that court’s procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(c) A subpoena under subsection (b) shall:

- (1) Incorporate the terms used in the foreign subpoena; and
- (2) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

§ -4 **Service of subpoena.** A subpoena issued by a clerk of court under section -3 shall be served in compliance with rule 45(c) of the Hawaii rules of civil procedure.

§ -5 **Deposition, production, and inspection.** Rules 26, 27, 28, 29, 30, 31, 34(c), and 45 of the Hawaii rules of civil procedure shall apply to subpoenas issued under section -3.

§ -6 **Application to court.** A motion to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under section -3 shall comply with the rules of court and statutes of this State and be submitted to the court in the circuit in which discovery is to be conducted.

§ -7 **Application to pending actions.** This chapter applies to requests for discovery in cases pending on the effective date of this chapter.”

SECTION 2. This Act shall take effect upon its approval.

(Approved April 12, 2012.)

ACT 18

H.B. NO. 1746

A Bill for an Act Relating to Condominiums.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that many older condominium projects in Hawaii operate with only a single meter measuring the aggregate consumption of utilities such as gas, water, and electricity for all units within the condominium project. Consequently, utility expenses are paid for as a common expense based on each unit’s undivided interest in the condominium, rather than individual units’ actual utility usage.

The legislature finds that this method of apportioning utility costs is unfair to both unit owners and the condominium association. A unit owner faces no consequences for wasteful energy consumption, such as leaving lights or air conditioning on at all times. Unit owners with vacant units, such as part-time residents or owners of unoccupied rental units, are also at a disadvantage. For example, a three-bedroom unit with a higher undivided interest than a studio apartment will pay a higher utility cost, regardless of whether the unit is occupied or vacant. The legislature further finds that wasteful or excessive utility use results in higher costs for the association when utility costs are paid for as a common expense.

The legislature also finds that the patent unfairness of common utility metering in condominium associations was addressed by Act 176, Session Laws of Hawaii 1977, and Act 93, Session Laws of Hawaii 2005, which added new sections to chapters 514A and 514B, Hawaii Revised Statutes, respectively, to require separate metering of nonresidential and residential units and to allow individual metering of condominium units. However, the requirement for separate monitoring of nonresidential units only applies to projects for which construction commenced after 1978. Condominiums constructed before 1978 are not required to adhere to those laws. The legislature finds that recent technology permits the individual metering of utilities in many instances for a reasonable cost regardless of the age or construction design of the condominium project.

The purpose of this Act is to permit a condominium board of directors to authorize the installation of utility meters to measure utility use by individual units; provided that the condominium association bears the cost of installing the utility meters.

SECTION 2. Section 514A-15.5, Hawaii Revised Statutes, is amended to read as follows:

"§514A-15.5 Metering of utilities. (a) Notwithstanding the provisions of section 514A-15, commercial apartments in mixed-use projects containing apartments for both residential and commercial use~~[-, the construction of which commences after December 31, 1977,]~~ shall have a separate meter, or calculations shall be made, or both, to determine the use by the commercial apartments of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage and the cost of ~~[such]~~ the utilities shall be paid by the owners of ~~[such]~~ the commercial units; provided that the apportionment of ~~[such]~~ the charges among owners of commercial apartments shall be done in a fair and equitable manner as set forth in the declaration or bylaws.

Notwithstanding any provision to the contrary in this chapter or in a project's declaration or bylaws of an association of apartment owners, the board of directors may authorize the installation of separate meters to determine the use by each of the residential and commercial apartments of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage; provided that the cost of installing the meters shall be paid by the association.

(b) ~~[Subject to]~~ Notwithstanding any approval requirements and spending limits contained in the declaration or bylaws of an association of apartment owners, the board of directors of any association of apartment owners may authorize the installation of meters to determine the use by ~~[the]~~ each residential ~~[and]~~ or commercial ~~[apartments]~~ apartment of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage~~[-]; provided that the cost of installing the meters shall be paid by the association.~~ The cost of metered utilities shall be paid by the owners of ~~[such apartments]~~ each apartment based on actual consumption and may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to these owners for the cost of metered utilities."

SECTION 3. Section 514B-42, Hawaii Revised Statutes, is amended to read as follows:

"[§514B-42] Metering of utilities. (a) Units in a project that includes units designated for both residential and nonresidential use shall have separate meters, or calculations shall be made, or both, as may be practicable, to determine the use by the nonresidential units of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage, and the cost of ~~[such]~~ the utilities shall be paid by the owners of the nonresidential units; provided that the apportionment of the charges among owners of nonresidential units shall be done in a fair and equitable manner as set forth in the declaration or bylaws. ~~[The requirements of this subsection shall not apply to projects for which construction commenced before January 1, 1978.]~~

Notwithstanding any provision to the contrary in this chapter or in a project's declaration or bylaws the board may authorize the installation of separate meters to determine the use by each of the residential and commercial units of utilities, including electricity, water, gas, fuel, oil, sewerage, and drainage; provided that the cost of installing the meters shall be paid by the association.

(b) ~~[Subject to]~~ Notwithstanding any approval requirements and spending limits contained in a project's declaration or bylaws, ~~[a]~~ the board of any association may authorize the installation of meters to determine the use by ~~[the]~~ each individual ~~[units]~~ unit of utilities, including electricity, water, gas, fuel, oil, sewerage, air conditioning, chiller water, and drainage~~[-]; provided that the cost~~

of installing the meters shall be paid by the association. The cost of metered utilities shall be paid by the owners of ~~[the units]~~ each unit based on actual consumption and, to the extent not billed directly to the unit owner by the utility provider, may be collected in the same manner as common expense assessments. Owners' maintenance fees shall be adjusted as necessary to avoid any duplication of charges to owners for the cost of metered utilities."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 12, 2012.)

ACT 19

H.B. NO. 2143

A Bill for an Act Relating to Public Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that when a vacancy occurs for the resident member seat on the Hawaii public housing authority board of directors, the resident advisory board is required to submit a list of five nominees for consideration by the governor. However, there may be situations where fewer than five individuals are interested in the seat, which results in a delay in providing a list to the governor and the resident member seat remaining vacant for extended periods.

The legislature believes it is important for the residents to have a voice on the board. Additionally, a vacancy may jeopardize federal funds because the United States Department of Housing and Urban Development requires the board of directors to include a resident member.

Accordingly, the purpose of this Act is to make the nomination process more flexible by allowing for a minimum of three but no more than five individuals on the list of nominees for the resident member seat.

SECTION 2. Section 356D-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If a vacancy occurs for the resident member seat on the board, the resident advisory board shall compile a list of no less than three but no more than five individuals for the governor's consideration for appointment to the board; provided that the nominees to the board shall be:

- (1) Participants who are directly assisted by the authority under the federal public housing or section 8 tenant-based programs and who need not be members of the resident advisory board;
- (2) At least eighteen years of age; and
- (3) Authorized members of the assisted household."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 12, 2012.)

A Bill for an Act Relating to Campaign Finance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend the restrictions on the use of campaign funds to allow the funds to be used to award scholarships to full-time students attending institutions of higher education or vocational education schools in programs that lead to a degree, certificate, or other recognized educational credential. For scholarship awards, no awards may be made from the filing deadline for nomination papers to the date of the general election.

SECTION 2. Section 11-381, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Campaign funds may be used by a candidate, treasurer, or candidate committee:

- (1) For any purpose directly related:
 - (A) In the case of the candidate, to the candidate’s own campaign; or
 - (B) In the case of a candidate committee or treasurer of a candidate committee, to the campaign of the candidate, question, or issue with which they are directly associated;
- (2) To purchase or lease consumer goods, vehicles, equipment, and services that provide a mixed benefit to the candidate. The candidate, however, shall reimburse the candidate’s candidate committee for the candidate’s personal use of these items unless the personal use is de minimis;
- (3) To make donations to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election period, the total amount of all donations shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-357; provided further that no contributions shall be made from the date the candidate files nomination papers to the date of the general election;
- (4) To make donations to any public school or public library; provided that in any election period, the total amount of all contributions shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-357; provided further that any donation under this paragraph shall not be aggregated with or imputed toward any limitation on donations pursuant to paragraph (3);
- (5) To award scholarships to full-time students attending an institution of higher education or a vocational education school in a program leading to a degree, certificate, or other recognized educational credential; provided that in any election period, the total amount of all scholarships awarded shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-357; provided further that no awards shall be made from the filing deadline for nomination papers to the date of the general election;
- [(5)] (6) To purchase not more than two tickets for each event held by another candidate or committee, whether or not the event constitutes a fundraiser as defined in section 11-342;

- ~~[(6)]~~ (7) To make contributions to the candidate's party so long as the contributions are not earmarked for another candidate; or
~~[(7)]~~ (8) To pay for ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an office."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 13, 2012.)

ACT 21

S.B. NO. 2971

A Bill for an Act Relating to Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 707-700, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“Vehicle” has the same meaning as in section 291E-1.”

SECTION 2. Section 707-705, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person is guilty of the offense of negligent injury in the first degree if that person causes serious bodily injury to another person by the operation of a ~~[motor]~~ vehicle in a negligent manner.”

SECTION 3. Section 707-706, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person is guilty of the offense of negligent injury in the second degree if that person causes substantial bodily injury to another person by the operation of a ~~[motor]~~ vehicle in a negligent manner.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 17, 2012.)

ACT 22

S.B. NO. 2518

A Bill for an Act Relating to Motor and Other Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-106.5, Hawaii Revised Statutes, is amended to read as follows:

“[§286-106.5] Expiration of licenses; out-of-country active duty military personnel[-] and dependents. Notwithstanding section 286-106, the expired driver's license of a member of any component of the United States armed forces who is on active federal service, or the member's dependent if the dependent accompanied the member, and whose driver's license expired while the member was deployed outside the United States, shall remain valid for ninety days after the service member's return to the United States.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 17, 2012.)

ACT 23

S.B. NO. 2650

A Bill for an Act Relating to Promotion of Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 712-1249.6, Hawaii Revised Statutes, is amended to read as follows:

“§712-1249.6 Promoting a controlled substance in, on, or near schools, school vehicles, [or] public parks[-], or public housing projects or complexes. (1) A person commits the offense of promoting a controlled substance in, on, or near schools, school vehicles, [or] public parks, or public housing projects or complexes if the person knowingly:

- (a) Distributes or possesses with intent to distribute a controlled substance in any amount in or on the real property comprising a school, [or] public park[;], or public housing project or complex;
- (b) Distributes or possesses with intent to distribute a controlled substance in any amount within seven hundred and fifty feet of the real property comprising a school, [or] public park[;], or public housing project or complex;
- (c) Distributes or possesses with intent to distribute a controlled substance in any amount while on any school vehicle, or within ten feet of a parked school vehicle during the time that the vehicle is in service for or waiting to transport school children; or
- (d) Manufactures methamphetamine or any of its salts, isomers, and salts of isomers, within seven hundred and fifty feet of the real property comprising a school, [or] public park[-], or public housing project or complex.

(2) A person who violates subsection (1)(a), (b), or (c) is guilty of a class C felony. A person who violates subsection (1)(d) is guilty of a class A felony.

(3) Any person with prior conviction or convictions under subsection (1)(a), (b), or (c) is punishable by a term of imprisonment of not less than two years and not more than ten years.

(4) Any individual convicted under subsection (3) of this section shall not be eligible for parole until the individual has served the minimum sentence required by such subsection.

(5) For the purposes of this section, "school vehicle" means every school vehicle as defined in section 286-181 and any regulations adopted pursuant to that section.

(6) For purposes of this section, "school" means any public or private preschool, kindergarten, elementary, intermediate, middle secondary, or high school.

(7) For purposes of this section, "public housing project or complex" means a housing project directly controlled, owned, developed, or managed by the Hawaii public housing authority pursuant to the federal or state low-rent public housing program.

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 17, 2012.)

ACT 24

H.B. NO. 1965

A Bill for an Act Relating to Continuing Education for Pharmacists.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 165, Session Laws of Hawaii 2004, established a requirement for continuing education for pharmacists. The current definition of continuing education courses has led to confusion about what are approved courses. The legislature finds that it is necessary to clarify what courses will be counted toward the continuing education requirement for pharmacists.

The purpose of this Act is to provide the clarification.

SECTION 2. Section 461-1, Hawaii Revised Statutes, is amended by amending the definition of "continuing education courses" to read as follows:

""Continuing education courses" means courses approved by the [~~American College of Pharmaceutical~~] Accreditation Council for Pharmacy Education [~~or continuing medical education courses that serve to improve patient safety and to maintain quality national standards in the prevention of medical errors].~~""

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval and shall apply to license renewals for the licensing biennium beginning on January 1, 2014.

(Approved April 17, 2012.)

A Bill for an Act Relating to Animal Cruelty.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 711-1109.1, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

“(1) If there is probable cause to believe that a pet animal or equine animal is being subjected to treatment in violation of section 711-1108.5, 711-1109, 711-1109.3, 711-1109.6, or 711-1109.35, as applicable, a law enforcement officer, after obtaining a search warrant, or in any other manner authorized by law, may enter the premises where the pet animal or equine animal is located to provide the pet animal or equine animal with food, water, and emergency medical treatment or to impound the pet animal~~[-]~~ or equine animal. If after reasonable effort, the owner or person having custody of the pet animal or equine animal cannot be found and notified of the impoundment, an impoundment notice shall be conspicuously posted on the premises and within seventy-two hours after posting, the notice shall be sent by certified mail to the address, if any, from which the pet animal or equine animal was removed.”

2. By amending subsection (3) to read:

“(3) A court may order a pet animal or equine animal impounded under subsection (1) to be held at a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals. A facility receiving the pet animal or equine animal shall provide adequate food and water and may provide veterinary care.”

SECTION 2. Section 711-1109.2, Hawaii Revised Statutes, is amended to read as follows:

“§711-1109.2 Forfeiture of animal prior to disposition of criminal charges.

(1) If any pet animal or equine animal is impounded pursuant to section 711-1109.1, prior to final disposition of ~~[the]~~ a criminal charge under section 711-1108.5, 711-1109, 711-1109.3, 711-1109.6, or 711-1109.35, as applicable, against the pet animal's or equine animal's owner, any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals that is holding the pet animal or equine animal may file a petition in the criminal action requesting that the court issue an order for forfeiture of the pet animal or equine animal to the county or to the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and the prosecuting attorney.

(2) Upon receipt of a petition pursuant to subsection (1), the court shall set a hearing on the petition. The hearing shall be conducted within fourteen days after the filing of the petition, or as soon as practicable.

(3) At a hearing conducted pursuant to subsection (2), the petitioner shall have the burden of establishing probable cause that the pet animal or equine animal was subjected to a violation of section 711-1108.5, 711-1109, 711-1109.3, 711-1109.6, or 711-1109.35~~[-]~~, as applicable. If the court finds that probable cause exists, the court shall order immediate forfeiture of the pet animal or equine animal to the petitioner, unless the defendant, within seventy-two hours of the hearing:

- (a) Posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the pet animal or equine animal from the date of initial impoundment to the date of trial; or
- (b) Demonstrates to the court that proper alternative care has been arranged for the pet animal~~[-]~~ or equine animal.

Notwithstanding subsection (3)(a), a court may waive, for good cause shown, the requirement that the defendant post a security deposit or bond.

(4) If a security deposit or bond has been posted in accordance with subsection (3)(a), the petitioner may draw from the security deposit or bond the actual reasonable costs incurred by the petitioner in caring for the pet animal or equine animal until the date of final disposition of the criminal action. If the trial is continued to a later date, any order of continuance shall require the defendant to post an additional security deposit or bond in an amount determined by the court that shall be sufficient to repay all additional reasonable costs anticipated to be incurred by the petitioner in caring for the pet animal or equine animal until the date of final disposition of the criminal action, and the petitioner may draw from the additional security deposit or bond as necessary.

(5) No pet animal or equine animal may be destroyed by a petitioner under this section prior to final disposition of ~~[the]~~ a criminal charge under section 711-1108.5, 711-1109, 711-1109.3, 711-1109.6, or 711-1109.35, as applicable, against the pet animal's or equine animal's owner, except in the event that the pet animal or equine animal is so severely injured that there is no reasonable probability that its life can be saved.

(6) Forfeiture of a pet animal or equine animal under this section shall not be subject to the provisions of chapter 712A.

(7) In addition to any reasonable costs incurred under subsection (4) by the petitioner in the caring for the pet animal or equine animal, the court may award reasonable attorney's fees and court costs to the petitioner following the conviction of the defendant.

(8) As used in this section, "pet animal or equine animal" includes any offspring from the pet animal or equine animal that was pregnant at the time of the rescue and born during the impoundment of the pet animal or equine animal."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012; provided that the amendments made to sections 711-1109.1 and 711-1109.2, Hawaii Revised Statutes, by sections 1 and 2 of this Act, shall not be repealed when section 711-1109.1(1) and sections 711-1109.2(1), (3), and (5), Hawaii Revised Statutes, are reenacted on July 1, 2015, pursuant to Act 149, Session Laws of Hawaii 2011.

(Approved April 17, 2012.)

A Bill for an Act Relating to Vacancies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 17-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In the case of a vacancy, the term of which does not end at the next succeeding special election held in conjunction with the general election:

- (1) If it occurs not later than on the ~~[sixtieth]~~ seventy-fifth day prior to the next succeeding special election held in conjunction with the general election, the vacancy shall be filled for the unexpired term at the next succeeding special election held in conjunction with the general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall file nomination papers not later than 4:30 p.m. on the ~~[fiftieth]~~ sixtieth day prior to the special election (but if such day is a Saturday, Sunday, or holiday then not later than 4:30 p.m. on the first working day immediately preceding) and shall be elected in accordance with this title. Pending the election, the board or the governor shall make a temporary appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term and shall serve until the election of the person duly elected to fill such vacancy.
- (2) If it occurs after the ~~[sixtieth]~~ seventy-fifth day prior to the next succeeding special election held in conjunction with the general election, the board or the governor shall make an appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 17, 2012.)

A Bill for an Act Relating to Sailing School Vessels.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 200-1, Hawaii Revised Statutes, is amended by amending the definition of “sailing school vessel” to read:

““Sailing school vessel” means a vessel:

- (1) Less than five hundred gross tons, carrying six or more individuals who are sailing school students or sailing school instructors princi-

- pally equipped for propulsion by sail even if the vessel has an auxiliary means of propulsion; ~~and~~
- (2) Owned or leased by a corporation, association, organization, or other duly chartered entity determined under the Internal Revenue Code to be exempt from the federal income tax and operated for the purpose of providing sailing instruction and therapeutic, educational, recreational, vocational, or family counseling services to emotionally disturbed youth or to youth sentenced by the family court to a rehabilitative sailing program and their families~~[-]; and~~
 - (3) That is in compliance with title 46 Code of Federal Regulations part 169."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 17, 2012.)

ACT 28

H.B. NO. 2533

A Bill for an Act Relating to the Definition of Aggravated Circumstances in the Child Protective Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. During the 2010 regular session, the legislature passed Senate Bill No. 2716, which was enacted as Act 135, Session Laws of Hawaii 2010, and codified as the Child Protective Act, chapter 587A, Hawaii Revised Statutes. Act 135 was a comprehensive update of the former Child Protective Act, chapter 587, Hawaii Revised Statutes.

The State subsequently was informed by the federal Administration for Children and Families that recent changes to the federal Child Abuse Prevention and Treatment Act needed to be incorporated into chapter 587A, Hawaii Revised Statutes. The changes to chapter 587A, Hawaii Revised Statutes, are necessary to ensure the State's compliance with the federal Child Abuse Prevention and Treatment Act as well as with the state plan under Title IV-E of the Social Security Act.

The purpose of this Act is to ensure that Hawaii remains eligible for approximately \$40,000,000 in Title IV-E and \$140,000 in Child Abuse Prevention and Treatment Act annual federal funding to support the State's child welfare services program by making amendments to the state's Child Protective Act that conform to the Federal Child Abuse Prevention and Treatment Act, as well as the state plan under Title IV-E of the Social Security Act.

SECTION 2. Section 587A-4, Hawaii Revised Statutes, is amended by amending the definition of "aggravated circumstances" to read as follows:

"Aggravated circumstances" means that:

- (1) The parent has murdered, or has solicited, aided, abetted, attempted, or conspired to commit the murder or voluntary manslaughter of, another child of the parent;
- (2) The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent;

- (3) The parent's rights regarding a sibling of the child have been judicially terminated or divested;
- (4) The parent has tortured the child; [or]
- (5) The child is an abandoned infant[-];
- (6) The parent has committed sexual abuse against another child of the parent; or
- (7) The parent is required to register with a sex offender registry under section 113(a) of the Adam Walsh Child Protection and Safety Act of 2006, title 42 United States Code section 16913(a)."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 17, 2012.)

ACT 29

H.B. NO. 2600

A Bill for an Act Relating to Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-14, Hawaii Revised Statutes, is amended to read as follows:

"§329-14 Schedule I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol (except levo-alphacetylmethadol, levomethadyl acetate, or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;

- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxidine;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacymorphan;
- (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide);
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidyl] propanamide);
- (43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritamide;
- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidyl]-propanamide);
- (54) Tilidine;
- (55) Trimeperidine;
- (56) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers; and
- (57) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers.

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;

- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine;
- (11) Heroin;
- (12) Hydromorphenol;
- (13) Methyl-desorphine;
- (14) Methyl-dihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Phoclodine; and
- (23) Thebacon.

(d) Any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alpha-ethyltryptamine (AET);
- (2) 2,5-dimethoxy-4-ethylamphetamine (DOET);
- (3) 2,5-dimethoxyamphetamine (2,5-DMA);
- (4) 3,4-methylenedioxy amphetamine;
- (5) 3,4-methylenedioxymethamphetamine (MDMA);
- (6) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-MDA);
- (7) 3,4-methylenedioxy-N-ethylamphetamine (MDE);
- (8) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (9) 4-bromo-2,5-dimethoxy-amphetamine (4-bromo-2,5-DMA);
- (10) 4-Bromo-2,5-dimethoxyphenethylamine (Nexus);
- (11) 3,4,5-trimethoxy amphetamine;
- (12) Bufotenine;
- (13) 4-methoxyamphetamine (PMA);
- (14) Diethyltryptamine;
- (15) Dimethyltryptamine;
- (16) 4-methyl-2,5-dimethoxy-amphetamine;
- (17) Gamma hydroxybutyrate (GHB) (some other names include gamma hydroxybutyric acid; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
- (18) Ibogaine;
- (19) Lysergic acid diethylamide;
- (20) Marijuana;
- (21) Parahexyl;
- (22) Mescaline;
- (23) Peyote;
- (24) N-ethyl-3-piperidyl benzilate;
- (25) N-methyl-3-piperidyl benzilate;
- (26) Psilocybin;
- (27) Psilocyn;
- (28) 1-[1-(2-Thienyl) cyclohexyl] Pyrrolidine (TCPy);

- [(29)] ~~Tetrahydrocannabinols; meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:~~
- ~~(A) 1 cis or trans tetrahydrocannabinol, and their optical isomers;~~
- ~~(B) 6 cis or trans tetrahydrocannabinol, and their optical isomers; and~~
- ~~(C) 3,4 cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered);~~
- [(30)] (29) Ethylamine analog of phencyclidine (PCE);
- [(31)] (30) Pyrrolidine analog of phencyclidine (PCPy, PHP);
- [(32)] (31) Thiophene analog of phencyclidine (TPCP, TCP);
- [(33)] (32) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number 96-48-0 when any such substance is intended for human ingestion;
- [(34)] (33) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4-butylenes glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol with Chemical Abstract Service number 110-63-4 when any such substance is intended for human ingestion;
- [(35)] (34) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts, and salts of isomers;
- [(36)] (35) N-benzylpiperazine (BZP; 1-benzylpiperazine) its optical isomers, salts, and salts of isomers;
- [(37)] (36) 1-(3-trifluoromethylphenyl)piperazine (TFMPP), its optical isomers, salts, and salts of isomers;
- [(38)] (37) Alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;
- [(39)] (38) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;
- [(40)] (39) Salvia divinorum;
- [(41)] (40) Salvinorin A;
- [(42)] (41) Divinorin A;¹
- [(43)] ~~Mephedrone (2-methylamino-1 p-tolylpropan-1-one) also known as 4-methylmethcathinone (4-MMC), methylephedrone or MMCAT;~~
- (44) ~~Methylenedioxypyrovalerone (MDPV, MDPK);~~
- (45) ~~(6aR,10aR)-9-(hydroxymethyl)-6, — 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol, (another trade name is HU-210);~~
- (46) ~~2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol), (other trade names include CP-47,497 and dimethyloctyl homologues);~~
- (47) ~~1-Pentyl-3-(1-naphthoyl)indole, (another trade name is JWH-018);~~
- (48) ~~1-Butyl-3-(1-naphthoyl)indole, (another trade name is JWH-073; and~~

- (49) Cannabicyclohexanol[-]; and
- (42) 5-Methoxy-N,N-Dimethyltryptamine (5-MeO-DIPT) (some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT).

(e) Depressants. Unless specifically excepted, the schedule shall include any material, compound, mixture, or preparation which contains any quantity of the substance:

- (1) Mecloqualone; or
- (2) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Aminorex;
- (2) Cathinone;
- (3) Fenethylamine;
- (4) Methcathinone;
- (5) N-ethylamphetamine;
- (6) 4-methylaminorex;
- (7) N,N-dimethylamphetamine[-]; and
- (8) Substituted cathinones, any compound, except bupropion or compounds listed under a different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

- (A) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
- (B) By substitution at the 3-position with an acyclic alkyl substituent; or
- (C) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

Some other trade names: Mephedrone (2-methylamino-1-p-tolylpropan-1-one), also known as 4-methylmethcathinone (4-MMC), methylephedrone or MMCAT;

Methylenedioxypropylvalerone (MDPV, MDPK); and methylone or 3,4-methylenedioxypropylvalerone.

(g) Any of the following cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Tetrahydrocannabinols; meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and Delta 3,4 cis or trans-tetrahydrocannabinol, and its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered);

- (2) Naphthoylindoles; meaning any compound containing a 3-(1-naphthoyl) indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;
- (3) Naphthylmethylindoles; meaning any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;
- (4) Naphthoylpyrroles; meaning any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent;
- (5) Naphthylmethylindenenes; meaning any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent;
- (6) Phenylacetylindoles; meaning any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent;
- (7) Cyclohexylphenols; meaning any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5-position of the phenolic ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not substituted in the cyclohexyl ring to any extent;
- (8) Benzoylindoles; meaning any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, aloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;
- (9) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone (another trade name is WIN 55,212-2); and
- (10) (6a,10a)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (other trade names are: HU-210 and HU-211)."

SECTION 2. Section 329-16, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk Dextropropoxyphene (nondosage form);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alphacetylmethadol (LAAM);
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (18) Pethidine (Meperidine);
- (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;
- (27) Sufentanil; and
- (28) Tapentadol; and
- (29) 4-anilino-N-phenethyl-4-piperidine (ANPP)].”

2. By amending subsection (f) to read:

“(f) Immediate precursor. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Immediate precursor to amphetamine and methamphetamine:
 - (A) Phenylacetone, phenyl-2-propanone(P2P), benzyl methyl ketone, methyl benzyl ketone [øf];
- (2) Immediate precursors to phencyclidine (PCP):
 - (A) 1-phenylcyclohexylamine; and
 - (B) 1-piperidinocyclohexanecarbonitrile(PCC)[-]; or
- (3) Immediate precursor to Fentanyl:
 - (A) 4-anilino-N-Phenethyl-4-piperidine (ANPP).”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 19, 2012.)

Note

1. Semicolon should be bracketed.

ACT 30

H.B. NO. 1964

A Bill for an Act Relating To Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:10A-126, Hawaii Revised Statutes, is amended to read as follows:

~~“[§§431:10A-126]—Chemotherapy services.] Cancer treatment.~~ (a) Notwithstanding section 23-51, all individual and group accident and health or sickness insurance policies that include coverage or benefits for the treatment of cancer shall provide payment or reimbursement for all types of chemotherapy that ~~[is] are~~ considered medically necessary as defined in section 432E-1.4[~~including~~].

~~(b) The cost-sharing for generic and non-generic [orally administered] oral chemotherapy[.] shall be provided at the same or lower [copayment percentage or relative coinsurance] amount or percentage as is applied to generic and non-generic intravenously administered chemotherapy; provided that [this section shall not apply to an accident only, specified disease, hospital indemnity, long-term care, or other limited benefit health insurance policy.] an insurer shall not increase the cost-share for intravenously administered chemotherapy in order to achieve compliance with this subsection.~~

~~(c) Individual and group accident and health or sickness insurance policies shall not increase enrollee cost-sharing for non-generic medications used for the treatment of cancer to any greater extent than such policies increase enrollee cost-sharing for other covered non-generic medication.~~

~~[(b)] (d) For the purposes of this section:~~

~~“Cost-share” or “cost-sharing” means copayment, coinsurance, or deductible provisions applicable to coverage for medications or treatments.~~

~~“Intravenously administered chemotherapy” means a physician-prescribed cancer treatment that is administered through injection directly into the patient’s circulatory system by a physician, physician assistant, nurse practitioner, nurse, or other medical personnel under the supervision of a physician and in a hospital, medical office, or other clinical setting.~~

~~“Oral chemotherapy” means a United States Food and Drug Administration-approved, physician-prescribed cancer treatment that is taken orally in the form of a tablet or capsule and may be administered in a hospital, medical office, or other clinical setting or may be delivered to the patient for self-administration under the direction or supervision of a physician outside of a hospital, medical office, or other clinical setting.~~

~~(e) This section shall not apply to an accident-only, specified disease, hospital indemnity, long-term care, or other limited-benefit health insurance policy.”~~

SECTION 2. Section 432:1-616, Hawaii Revised Statutes, is amended to read as follows:

~~“[§432:1-616]—Chemotherapy services.]~~ Cancer treatment. (a) All individual and group hospital and medical service plan contracts that include coverage or benefits for the treatment of cancer shall provide payment or reimbursement for all types of chemotherapy that [is] are considered medically necessary as defined in section 432E-1.4[, including].

(b) The cost-sharing for generic and non-generic [orally administered] oral chemotherapy[;] shall be provided at the same or lower [copayment percentage or relative coinsurance] amount or percentage as is applied to generic and non-generic intravenously administered chemotherapy; provided that [this section shall not apply to an accident only, specified disease, hospital indemnity, long-term care, or other limited-benefit health insurance policy.] an insurer shall not increase the cost-share for intravenously administered chemotherapy in order to achieve compliance with this subsection.

(c) Individual and group hospital and medical service plan contracts shall not increase enrollee cost-sharing for non-generic medications used for the treatment of cancer to any greater extent than such policies increase enrollee cost-sharing for other covered non-generic medication.

~~[(b)]~~ (d) For the purposes of this section:

“Cost-share” or “cost-sharing” means copayment, coinsurance, or deductible provisions applicable to coverage for medications or treatments.

“Intravenously administered chemotherapy” means a physician-prescribed cancer treatment that is administered through injection directly into the patient’s circulatory system by a physician, physician assistant, nurse practitioner, nurse, or other medical personnel under the supervision of a physician and in a hospital, medical office, or other clinical setting.

“Oral chemotherapy” means a United States Food and Drug Administration-approved, physician-prescribed cancer treatment that is taken orally in the form of a tablet or capsule and may be administered in a hospital, medical office, or other clinical setting or may be delivered to the patient for self-administration under the direction or supervision of a physician outside of a hospital, medical office, or other clinical setting.

(e) This section shall not apply to an accident-only, specified disease, hospital indemnity, long-term care, or other limited-benefit health insurance policy.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 20, 2012.)

ACT 31

S.B. NO. 2808

A Bill for an Act Making an Emergency Appropriation to the Department of Human Services for Health Care Payments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. A critical fiscal emergency exists. Projected funding shortfalls in key programs and in payroll made it necessary for the department of human services in the current fiscal year 2011-2012 to transfer \$11,431,375 in general funds from HMS 401, Health Care Payments, to HMS 301, HMS 902, HMS 904, and HMS 236 to ensure that critical services would not have to be eliminated. The shortfalls were as follows:

- (1) HMS 301, Child Protective Services, for purchase of service contracts to ensure the safety and well-being of children who have been abused and neglected and to support foster families;
- (2) HMS 902, General Support for Health Care Payments, for general administrative costs. The reduction to HMS 902 generated hardship within the Med-QUEST Division, which would have been unable to fund even basic supplies;
- (3) HMS 904, General Administration for essential departmental information technology maintenance and support; and
- (4) Payroll for HMS 236, Case Management for Self-Sufficiency Services; HMS 301, Child Protective Services; HMS 902, General Support for Health Care Payments; and HMS 904, General Administration. The payroll shortfalls were created by fiscal restraint reductions in the fiscal year 2011-2012 budget.

In addition, enrollment in Med-QUEST health care programs continued to increase in fiscal year 2011-2012, creating an additional shortfall of \$449,782 in HMS 401 for health care payments for fiscal year 2011-2012.

The transfer of funds from HMS 401 was approved by the governor pursuant to section 95 of Act 164, Session Laws of Hawaii 2011, which permits transfers of funds between programs within an expending agency.

The purpose of this Act is to appropriate \$11,881,157 in general funds for an emergency appropriation for fiscal year 2011-2012 for health care payments (HMS 401) to address the funding shortfall in the Med-QUEST health care programs as the result of the transfer of funds in fiscal year 2011-2012 and increase in medicaid enrollment.

This funding will ensure continued timely payments to contracted health plans and will ensure that there will be no disruption in the provision of medically necessary services to program recipients.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$11,881,157, or so much thereof as may be necessary for fiscal year 2011-2012 to be used for health care payments (HMS 401).

SECTION 4. The sums appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 20, 2012.)

ACT 32

H.B. NO. 994

A Bill for an Act Relating to Motor Vehicle Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:10C-301.5, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-301.5 Covered loss deductible. Whenever a person effects a recovery for bodily injury, whether by suit, arbitration, or settlement, and it is determined that the person is entitled to recover damages, the judgment, settlement, or award shall be reduced by \$5,000 or the amount of personal injury protection benefits incurred, whichever is greater, up to the maximum limit. The covered loss deductible shall not include benefits paid or incurred under any optional additional ~~[coverage or]~~ coverage, benefits paid under any public assistance program~~[-], or benefits paid or incurred under chapter 386.~~”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2013.

(Approved April 20, 2012.)

ACT 33

H.B. NO. 2162

A Bill for an Act Relating to Uniform Commercial Code Article 9.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended by adding a new part to article 9 to be designated and to read as follows:

“PART 8

TRANSITION PROVISIONS FOR 2010 AMENDMENTS

§490:9-801 Effective date. This part shall take effect on July 1, 2013.

§490:9-802 Savings clause. (a) Except as otherwise provided in this part, this part applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2013.

(b) This part does not affect an action, case, or proceeding commenced before July 1, 2013.

§490:9-803 Security interest perfected prior to July 1, 2013. (a) A security interest that is a perfected security interest prior to July 1, 2013, shall be a perfected security interest under this article if, on or before July 1, 2013, the applicable requirements for attachment and perfection under this article are satisfied without further action.

(b) Except as otherwise provided in section 490:9-805, if, prior to July 1, 2013, a security interest is a perfected security interest, but the applicable requirements for perfection under this article are not satisfied by July 1, 2013, the security interest shall remain perfected thereafter only if the applicable requirements for perfection under this article are satisfied on or before July 1, 2014.

§490:9-804 Security interest unperfected before July 1, 2013. A security interest that is an unperfected security interest prior to July 1, 2013, shall be a perfected security interest:

- (1) Without further action, if, on or before July 1, 2013, the applicable requirements for perfection under this article are satisfied; or
- (2) Upon satisfaction of the applicable requirements for perfection.

§490:9-805 Effectiveness of action taken before July 1, 2013. (a) If a financing statement is filed prior to July 1, 2013, to perfect a security interest, that filing shall be effective to the extent that it satisfies the applicable requirements for perfection under this article.

(b) A financing statement that was filed prior to July 1, 2013, shall be effective if it satisfies the applicable requirements for perfection under the then-existing state law; provided that except as provided in subsections (c) and (d) and section 490:9-806, the financing statement shall cease to be effective:

- (1) If the financing statement was filed in this State, at the time the financing statement would have ceased to be effective under the then-existing state law; or
- (2) If the financing statement was filed in another jurisdiction, at the earlier of:
 - (A) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or
 - (B) June 30, 2018.

(c) The filing of a continuation statement on or after July 1, 2013, shall not continue the effectiveness of a financing statement filed prior to July 1, 2013; provided that upon the timely filing of a continuation statement on or after July 1, 2013, in accordance with the law of the jurisdiction governing perfection as provided in this article, the effectiveness of a financing statement filed in the same office in that jurisdiction prior to July 1, 2013, shall continue for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) shall apply to a financing statement that is filed prior to July 1, 2013, against a transmitting utility and that satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this article as it existed prior to July 1, 2013, only to the extent that this article provides that the law of a jurisdiction other than the jurisdiction in which the financing statement was filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed prior to July 1, 2013, and a continuation statement filed on or after July 1, 2013, shall be effective only to the extent that it satisfies the requirements of section 490:9-806. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of section 490:9-503(a)(2). A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of section 490:9-503(a)(3).

§490:9-806 When initial financing statement suffices to continue effectiveness of financing statement. (a) The filing of an initial financing statement in the office specified in section 490:9-501 continues the effectiveness of a financing statement filed prior to July 1, 2013, if:

- (1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this article;
 - (2) The pre-effective-date financing statement was filed in an office in another state; and
 - (3) The initial financing statement satisfies subsection (c).
- (b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:
- (1) If the initial financing statement is filed prior to July 1, 2013, for the period provided in section 490:9-515 with respect to an initial financing statement; and

- (2) If the initial financing statement is filed on or after July 1, 2013, for the period provided in section 490:9-515 for an initial financing statement.
- (c) To be effective for purposes of subsection (a), an initial financing statement shall:
 - (1) Satisfy the requirements of part 5 for an initial financing statement;
 - (2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and
 - (3) Indicate that the pre-effective-date financing statement remains effective.

§490:9-807 Amendment of pre-effective-date financing statement. (a) For purposes of this section, "pre-effective-date financing statement" means a financing statement filed before July 1, 2013.

(b) On or after July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this article; provided that the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended on or after July 1, 2013, only if:

- (1) The pre-effective-date financing statement and an amendment are filed in the office specified in section 490:9-501;
- (2) An amendment is filed in the office specified in section 490:9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 490:9-806(c); or
- (3) An initial financing statement that provides the information as amended and satisfies section 490:9-806(c) is filed in the office specified in section 490:9-501.

(d) If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 490:9-805(c) and (e) or 490:9-806.

(e) Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after July 1, 2013, by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 490:9-806(c) has been filed in the office governing perfection as provided in this article as the office in which to file a financing statement.

§490:9-808 Person entitled to file initial financing statement or continuation statement. A person may file an initial financing statement or a continuation statement under this part if:

- (1) The secured party of record authorizes the filing; and
- (2) The filing is necessary under this part:
 - (A) To continue the effectiveness of a financing statement filed before this part takes effect; or

(B) To perfect or continue the perfection of a security interest.

§490:9-809 Priority. This article determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, this article as it existed before July 1, 2013, shall determine priority.”

SECTION 2. Section 490:9-102, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Public organic record” means a record that is available to the public for inspection and is:

- (1) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States that amends or restates the initial record;
- (2) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
- (3) A record consisting of legislation enacted by the legislature of a state or the Congress of the United States that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States that amends or restates the name of the organization.”

2. By amending the definitions of “authenticate”, “certificate of title”, “jurisdiction of organization”, and “registered organization” to read:

““Authenticate” means:

- (1) To sign; or
- (2) [To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.] With present intent to adopt or accept a record, to attach or to logically associate with the record an electronic sound, symbol, or process.

“Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

“Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

“Registered organization” means an organization formed or organized solely under the law of a single state or the United States [and as to which the state or the United States must maintain a public record showing the organization to have been organized.] by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or or-

ganized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state."

SECTION 3. Section 490:9-105, Hawaii Revised Statutes, is amended to read as follows:

"§490:9-105 Control of electronic chattel paper. (a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

- (1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) The authoritative copy identifies the secured party as the assignee of the record or records;
- (3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (4) Copies or ~~revisions~~ amendments that add or change an identified assignee of the authoritative copy can be made only with the ~~participation~~ consent of the secured party;
- (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) Any ~~revision~~ amendment of the authoritative copy is readily identifiable as ~~an~~ authorized or unauthorized revision."

SECTION 4. Section 490:9-307, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

- (1) In the state that the law of the United States designates, if the law designates a state of location;
- (2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location~~;~~, including by designating its main office, home office, or other comparable office; or
- (3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies."

SECTION 5. Section 490:9-311, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

- (1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 490:9-310(a);
- (2) Chapter 286; or

- (3) A ~~[certificate of title]~~ statute of another jurisdiction which provides for a security interest to be indicated on ~~[the]~~ a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property."

SECTION 6. Section 490:9-316, Hawaii Revised Statutes, is amended to read as follows:

"§490:9-316 [Continued perfection of security interest following] Effect of change in governing law. (a) A security interest perfected pursuant to the law of the jurisdiction designated in section 490:9-301(1) or 490:9-305(c) remains perfected until the earliest of:

- (1) The time perfection would have ceased under the law of that jurisdiction;
- (2) The expiration of four months after a change of the debtor's location to another jurisdiction; or
- (3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- (1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- (2) Thereafter the collateral is brought into another jurisdiction; and
- (3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 490:9-311(b) or 490:9-313 are not satisfied before the earlier of:

- (1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or
- (2) The expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

- (1) The time the security interest would have become unperfected under the law of that jurisdiction; or
- (2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.
- (g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

- (1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in section 490:9-301(1) or 490:9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location; and
- (2) If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 490:9-301(1) or 490:9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.
- (i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in section 490:9-301(1) or 490:9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:
 - (1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 490:9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor; and
 - (2) A security interest perfected by the financing statement and that becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 490:9-301(1) or 490:9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but that does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value."

SECTION 7. Section 490:9-317, Hawaii Revised Statutes, is amended as follows:

- 1. By amending subsection (b) to read:
 "(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments,

or ~~[a security certificate]~~ certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.”

2. By amending subsection (d) to read:

“(d) A licensee of a general intangible or a buyer, other than a secured party, of ~~[accounts, electronic chattel paper, electronic documents, general intangibles, or investment property]~~ collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.”

SECTION 8. Section 490:9-326, Hawaii Revised Statutes, is amended to read as follows:

“§490:9-326 Priority of security interests created by new debtor.

(a) Subject to subsection (b), a security interest that is created by a new debtor [which is] in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that [is effective solely under section 490:9-508 in collateral in which a new debtor has or acquires rights] would be ineffective to perfect the security interest but for the application of section 490:9-316(i)(1) or 490:9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement ~~[that is effective solely under section 490:9-508]~~.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements ~~[that are effective solely under section 490:9-508.]~~ described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor’s having become bound.”

SECTION 9. Section 490:9-406, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note~~[-]~~, other than a sale pursuant to a disposition under section 490:9-610 or an acceptance of collateral under section 490:9-620.”

SECTION 10. Section 490:9-408, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note~~[-]~~, other than a sale pursuant to a disposition under section 490:9-610 or an acceptance of collateral under section 490:9-620.”

SECTION 11. Section 490:9-502, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

- (1) The record indicates the goods or accounts that it covers;
- (2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real prop-

- erty described in the record and is as-extracted collateral or timber to be cut;
- (3) The record satisfies ~~[with]~~ the requirements for a financing statement in this section ~~[other than an indication]~~; provided that:
 - (A) The record need not indicate that it is to be filed in the real property records; and
 - (B) The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom section 490:9-503(a)(4) applies; and
 - (4) The record is duly recorded."

SECTION 12. Section 490:9-503, Hawaii Revised Statutes, is amended to read as follows:

"§490:9-503 Name of debtor and secured party. (a) A financing statement sufficiently provides the name of the debtor:

- (1) ~~[If] Except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name [of the debtor indicated] that is stated to be the registered organization's name on the public organic record [of] most recently filed with or issued or enacted by the [debtor's] registered organization's jurisdiction of organization which [shows the debtor to have been organized;] purports to state, amend, or restate the registered organization's name;~~
- (2) ~~[If] Subject to subsection (f), if the [debtor is a decedent's estate,] collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the [debtor is an estate;] collateral is being administered by a personal representative;~~
- (3) If the [debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:
 - (A) ~~Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and~~
 - (B) ~~Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and]~~

collateral is held in a trust that is not a registered organization, only if the financing statement:

- (A) Provides, as the name of the debtor:
 - (i) If the organic record of the trust specifies a name for the trust, the name specified; or
 - (ii) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and
- (B) In a separate part of the financing statement:
 - (i) If the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

- (ii) If the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;
- (4) Subject to subsection (g), if the debtor is an individual to whom this State has issued a driver's license or non-driver identification card that has not expired, only if the financing statement provides the name of the individual that is indicated on the driver's license or non-driver identification card;
- (5) If the debtor is an individual to whom paragraph (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and
- [4] (6) In other cases:
 - (A) If the debtor has a name, only if ~~it~~ the financing statement provides the ~~individual or~~ organizational name of the debtor; and
 - (B) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor~~[-]~~, in a manner that each name provided would be sufficient if the person named were the debtor.
- (b) A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:
 - (1) A trade name or other name of the debtor; or
 - (2) Unless required under subsection ~~[(a)(4)(B)]~~, (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.
- (c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.
- (d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.
- (e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.
- (f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).
- (g) If this State has issued to an individual more than one driver's license or non-driver identification card of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.
- (h) In this section, the "name of the settlor or testator" means:
 - (1) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record filed most recently with or issued or enacted by the settlor's jurisdiction of organization that purports to state, amend, or restate the settlor's name; or
 - (2) In other cases, the name of the settlor or testator indicated in the trust's organic record."

SECTION 13. Section 490:9-507, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) If ~~[a debtor so changes its]~~ the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under sec-

tion 490:9-503(a) so that the financing statement becomes seriously misleading under section 490:9-506:

- (1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the ~~[change;]~~ filed financing statement becomes seriously misleading; and
- (2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the ~~[change;]~~ filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after ~~[the change;]~~ the financing statement became seriously misleading."

SECTION 14. Section 490:9-515, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed."

SECTION 15. Section 490:9-516, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

- (1) The record is not communicated by a method or medium of communication authorized by the filing office;
- (2) An amount equal to or greater than the applicable filing fee is not tendered;
- (3) The filing office is unable to index the record because:
 - (A) In the case of an initial financing statement, the record does not provide a name for the debtor;
 - (B) In the case of an amendment or ~~[correction]~~ information statement, the record:
 - (i) Does not identify the initial financing statement as required by section 490:9-512 or 490:9-518, as applicable; or
 - (ii) Identifies an initial financing statement whose effectiveness has lapsed under section 490:9-515;
 - (C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's ~~[last name;]~~ surname; or
 - (D) In the case of a record filed in the filing office described in section 490:9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;
- (4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- (5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

- (A) Provide a mailing address for the debtor; or
- (B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization; ~~or~~
- (C) ~~If the financing statement indicates that the debtor is an organization, provide:~~
 - (i) ~~A type of organization for the debtor;~~
 - (ii) ~~A jurisdiction of organization for the debtor; or~~
 - (iii) ~~An organizational identification number for the debtor or indicate that the debtor has none;]~~
- (6) In the case of an assignment reflected in an initial financing statement under section 490:9-514(a) or an amendment filed under section 490:9-514(b), the record does not provide a name and mailing address for the assignee; or
- (7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 490:9-515(d)."

SECTION 16. Section 490:9-518, Hawaii Revised Statutes, is amended to read as follows:

"§490:9-518 Claim concerning inaccurate or wrongfully filed record.

(a) A person may file in the filing office ~~[a correction]~~ an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

~~[(b) A correction statement must:~~

- ~~(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;~~
- ~~(2) Indicate that it is a correction statement; and~~
- ~~(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.]~~

~~(b) An information statement under subsection (a) shall:~~

- ~~(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;~~
- ~~(2) Indicate that it is an information statement; and~~
- ~~(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.~~

~~(c) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under section 490:9-509(d).~~

~~(d) An information statement under subsection (c) shall:~~

- ~~(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;~~
- ~~(2) Indicate that it is an information statement; and~~
- ~~(3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under section 490:9-509(d).~~

~~[(e)] (e) The filing of [a correction] an information statement does not affect the effectiveness of an initial financing statement or other filed record."~~

ACT 33

SECTION 17. Section 490:9-521, Hawaii Revised Statutes, is amended to read as follows:

“§490:9-521 Uniform form of written financing statement and amendment.

(a) A filing office that accepts written records for filing may not refuse to accept a written initial financing statement in the following form, except for a reason set forth in section 490:9-516(b):

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS

- A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

1. DEBTOR'S NAME - provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

1c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

2. DEBTOR'S NAME - provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

2c. MAILING ADDRESS

CITY STATE POSTAL CODE COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY) - provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

3c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box:

Collateral is ☐ held in a Trust (see Instructions)

☐ being administered by a Decedent's Personal Representative.

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction

☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien

☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor

☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA

[UCC FINANCING STATEMENT (Form UCC1)]

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR (same as item 1a or 1b on Financing Statement)

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

10. ADDITIONAL DEBTOR'S NAME - provide only one Debtor name (10a or 10b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR

SUFFIX

ACT 33

10c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY

11. ADDITIONAL SECURED PARTY'S NAME or ASSIGNOR SECURED PARTY'S NAME - provide only one name (11a or 11b)
- 11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME
ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

11c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)
13. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)
14. This FINANCING STATEMENT:
- ☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing
15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):
16. Description of real estate:
17. MISCELLANEOUS:

[UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad)]

(b) A filing office that accepts written records for filing may not refuse to accept a written financing statement amendment in the following form, except for a reason set forth in section 490:9-516(b):

UCC FINANCING STATEMENT AMENDMENT
FOLLOW INSTRUCTIONS

- A. NAME & PHONE OF CONTACT AT FILER (optional)
- B. E-MAIL CONTACT AT FILER (optional)
- C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13.

2. ☐ **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement
3. ☐ **ASSIGNMENT** (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8
4. ☐ **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured

Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. ☐ **PARTY INFORMATION CHANGE:**

Check one of these two boxes:

This Change affects ☐ Debtor or ☐ Secured Party of record.

AND

Check one of these three boxes to:

- ☐ **CHANGE** name and/or address: Complete item 6a or 6b, and item 7a or 7b and item 7c.
- ☐ **ADD** name: Complete item 7a or 7b, and item 7c.
- ☐ **DELETE** name: Give record name to be deleted in item 6a or 6b.
6. **CURRENT RECORD INFORMATION:** Complete for Party Information Change - provide only one name (6a or 6b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)
- 6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	
ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX

7. **CHANGED OR ADDED INFORMATION:** Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact full name; do not omit, modify, or abbreviate any word in the Debtor's name)
- 7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	
ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR		SUFFIX

7c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
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8. ☐ **COLLATERAL CHANGE:**
- Also check one of these four boxes:
- ☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral
- ☐ ASSIGN collateral
- Indicate collateral:
9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT - provide only one

ACT 33

name (9a or 9b) (name of Assignor, if this is an Assignment)

If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

10. OPTIONAL FILER REFERENCE DATA

[UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction for item 13 - insert only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)

15. This FINANCING STATEMENT AMENDMENT: ☐ covers timber to be cut

☐ covers as-extracted collateral ☐ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

17. Description of real estate

18. MISCELLANEOUS:

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]

(c) A form that a filing office may not refuse to accept under subsection (a) or (b) must conform to the format prescribed for the form by the National Conference of Commissioners on Uniform State Laws.”

SECTION 18. Section 490:9-607, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

- (1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
- (2) The secured party’s sworn affidavit in recordable form stating that:
 - (A) A default has occurred[;] with respect to the obligation secured by the mortgage; and
 - (B) The secured party is entitled to enforce the mortgage nonjudicially.”

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 20. This Act shall take effect on July 1, 2013.

(Approved April 20, 2012.)

ACT 34

S.B. NO. 3029

A Bill for an Act Relating to Statutory Revision: Amending Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References and Clarifying Language.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 11-156, Hawaii Revised Statutes, is amended to read as follows:

“§11-156 **Certificate of election and certificate of results, form.** The chief election officer or county clerk shall deliver certificates of election to the persons elected as determined under section 11-155. The chief election officer or county clerk in county elections shall issue certificates of results where a question has been voted upon. Certificates of election shall be delivered only after the filing of expense statements by the person elected in accordance with part ~~[XII]~~ XIII and after the expiration of time for bringing an election contest. The certificate of election shall be substantially in the following form:

CERTIFICATE OF ELECTION

I,....., chief election officer (county clerk) of Hawaii (county), do hereby certify that was on the day of [19] 20....., duly

elected a (name of office) for the district for a term
 expiring on the day of, A.D. [19] 20.....

Witness my hand this day of, A.D. [19] 20.....

.....
 Chief Election Officer (County Clerk)

The certificate of results shall be substantially in the following form:

CERTIFICATE OF RESULTS

I,, chief election officer (county clerk) of Hawaii
 (county), do hereby certify that (question) was on the day of
 [19] 20..., duly adopted (rejected) by a majority of the votes cast.

.....
 Chief Election Officer (County Clerk)

If there is an election contest these certificates shall be delivered only after a final determination in the contest has been made and the time for an appeal has expired."

SECTION 2. Section 11-157, Hawaii Revised Statutes, is amended to read as follows:

"§11-157 In case of tie. In case of the failure of an election by reason of the equality of vote between two or more candidates, the tie shall be decided by the chief election officer or county clerk in the case of county elections in accordance with the following procedure:

- (1) In the case of an election involving a seat for the senate, house of representatives, or county council where only voters within a specified district are allowed to cast a vote, the winner shall be declared as follows:
 - (A) For each precinct in the affected district, an election rate point shall be calculated by dividing the total voter turnout in that precinct by the total voter turnout in the district. For the purpose of this subparagraph, the absentee votes cast for the affected district shall be treated as a precinct. The election rate point shall be calculated by dividing the total absentee votes cast for the affected district by the total voter turnout in that district. All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth;
 - (B) The candidate with the highest number of votes in a precinct shall be allocated the election rate point calculated under subparagraph (A) for that precinct. In the event that two or more persons are tied in receiving the highest number of votes for that precinct, the election rate point shall be equally apportioned among those candidates involved in that precinct tie;
 - (C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as provided under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the highest election rate point total shall be declared the winner; and
 - (D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the precinct with the largest voter turnout shall be declared the winner;

- (2) In the case of an election involving a federal office or an elective office where the voters in the entire State or in an entire county are allowed to cast a vote, the winner shall be declared as follows:
 - (A) For each representative district in the State or county, as the case may be, an election rate point shall be calculated by dividing the total voter turnout in that representative district by the total voter turnout in the state, county, or federal office district, as the case may be; provided that for purposes of this subparagraph:
 - (i) The absentee votes cast for a statewide, countywide, or federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total absentee votes cast for the statewide, countywide, or federal office by the total voter turnout in the state, county, or federal office district, as the case may be; and
 - (ii) The overseas votes cast for any election in the State for a federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total number of overseas votes cast for the affected federal office by the total voter turnout in the affected federal office district. The term "overseas votes" means those votes cast by absentee ballots for a presidential election as provided in section 15-3.

All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth;
 - (B) The candidate with the highest number of votes in a representative district shall be allocated the election rate point calculated under subparagraph (A) for that district. In the event that two or more persons are tied in receiving the highest number of votes for that district, the election rate point shall be equally apportioned among those candidates involved in that district tie;
 - (C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as prescribed under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the highest election rate point total shall be declared the winner; and
 - (D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the representative district with the largest voter turnout shall be declared the winner."

SECTION 3. Section 12-8, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) If a political party objects to the nomination paper filed by a candidate because the candidate is not a member of the party pursuant to the party's rules filed in conformance with section 11-63, an officer of the party whose name appears on file with the chief election officer shall file a complaint in the circuit court for a prompt determination of the objection; provided that the complaint shall be filed with the clerk of the circuit court not later than 4:30 p.m. on the sixtieth ~~working~~ day or the next earliest working day prior to that election day."

SECTION 4. Section 121-15, Hawaii Revised Statutes, is amended to read as follows:

“§121-15 Commissioned and warrant officers; transfer to inactive list, retirement, separation. Officers may be transferred to the inactive or retired lists, or separated from the service as follows:

- (1) An officer may be honorably discharged by reason of resignation, removal of residence from the State, failure to meet or maintain the requirements for federal recognition, or acceptance of an incompatible office.
- (2) An officer who is eligible to be placed on the retired list under federal law, or who has completed the years of service required for retirement under ~~[chapter 67 of Title]~~ title 10, United States Code, chapter 1223 may at the officer's request be discharged, or with the approval of the governor be placed on the retired list.
- (3) Any commissioned officer who has served in the same grade in the military service of the State for a continuous period of not less than ten years, upon the commissioned officer's own request, may be honorably discharged or placed on the retired list.
- (4) Any officer who is rendered surplus by the disbandment of the officer's unit, or who changes the officer's residence within the State and is unable to serve with the unit to which the officer was assigned, shall be absorbed in another unit of the army or air national guard, or if there be no such other available unit the officer shall be transferred to an inactive status as authorized by the secretary of the army or of the air force, and may be ordered to perform appropriate duties.
- (5) At any time the moral character, capacity, and general fitness for the service of any officer may be investigated and determined by an efficiency board of three commissioned or warrant officers, senior in rank to the officer if possible, to be appointed by the governor. The investigation shall be thorough and impartial, and may include misconduct in civil life for which the officer is not amenable to trial by court-martial. If the findings are unfavorable to the officer and are approved by the governor, the officer shall be discharged.
- (6) At any time the physical fitness for the service of any officer, upon order of the governor, may be investigated and determined by a board of not less than three commissioned officers, not less than two of whom shall be medical officers. If the board reports the officer to be physically unable to perform the duties of the officer's office, and the report is approved by the governor, the officer may be discharged or placed on the retired list.
- (7) Any officer who is under sentence of imprisonment by a civil court for any offense involving moral turpitude, whether suspended or not, or who has been absent without leave for three months, or who refuses or neglects to report before the board provided in paragraph (5) or (6) within a period of three months from the time the officer is ordered to report before the board may be discharged with the approval of the governor.
- (8) Upon the approval by the governor of a sentence of dismissal rendered by a court-martial, the officer shall be dismissed.”

SECTION 5. Section 128D-1, Hawaii Revised Statutes, is amended by amending the definition of “national contingency plan” to read as follows:

““National contingency plan” means the national contingency plan published under section ~~[311(e)]~~ 311(d) of the Clean Water Act or revised pursuant to section 105 of CERCLA.”

SECTION 6. Section 142-61, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Whenever fences are built on any boundary, or within the exterior boundaries of any privately owned land or lot, or within the exterior boundaries of any leased public land or lot, to keep animals confined to certain areas or to keep farms protected against the trespass of animals, except on the boundary of any government road, it shall be lawful to have fence wire electrically charged, provided such wire is fastened to insulators supported on posts, and provided also that the charge supplied shall be through an approved electric fence controller which shall be labeled or listed as conforming to the standards of either the ~~[National Bureau of Standards,]~~ National Institute of Standards and Technology, the Underwriters Laboratories, Inc., or any other similar institutions of recognized standing, and provided that an electric fence controller intended for use in the State shall bear a recognized commercial trade name and the name of the selling agency of same.”

SECTION 7. Section 144-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any commercial feed, other than custom-mixed or toll-milled feed, distributed in this State or imported shall be accompanied by a legible label bearing the following information:

- (1) The net weight.
- (2) The product name or brand name under which the commercial feed is distributed.
- (3) The guaranteed analysis stated in such terms as the department by rule determines is required to advise the user of the composition of the commercial feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods published by the ~~[Association of Official Analytical Chemists,]~~ AOAC International.
- (4) The common or official name of each ingredient used in the manufacture of the commercial feed, except as the department may, by rule, permit the use of a collective term for a group of ingredients all of which perform the same function.
- (5) The name and principal address of the person responsible for distributing the commercial feed.
- (6) Adequate directions for use for all commercial feeds containing drugs and for such other commercial feeds as the department may require by rule as necessary for their safe and effective use.
- (7) Such precautionary statements as the department by rule determines are necessary for the safe and effective use of the commercial feed.”

SECTION 8. Section 144-9, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Sampling and analysis shall be conducted in accordance with methods published by the ~~[Association of Official Analytical Chemists]~~ AOAC International or in accordance with other generally recognized methods.”

SECTION 9. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) Section 164 (with respect to taxes) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that:

- (1) Sections 164(a)(6)[, 164(b)(5);] and 164(b)(6) shall not be operative for the purposes of this chapter; and
- (2) The deductions under sections 164(a)(3) and 164(b)(5) shall not be operative for corporate taxpayers and shall be operative only for the following individual taxpayers:
 - (A) A taxpayer filing a single return or a married person filing separately with a federal adjusted gross income of less than \$100,000;
 - (B) A taxpayer filing as a head of household with a federal adjusted gross income of less than \$150,000; and
 - (C) A taxpayer filing a joint return or as a surviving spouse with a federal adjusted gross income of less than \$200,000.”

SECTION 10. Chapter 431, Hawaii Revised Statutes, is amended by amending the title of part VIII of article 10D to read as follows:

**“[PART VIII.] USE OF SENIOR-SPECIFIC
[CERTIFICATIONS] AND PROFESSIONAL DESIGNATIONS”**

SECTION 11. Section 432E-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) A health carrier shall send notice of its final internal determination within sixty days of the submission of the complaint to the enrollee, the enrollee’s appointed representative, if applicable, the enrollee’s treating provider, and the commissioner. The notice shall include the following information regarding the enrollee’s rights and procedures:

- (1) The enrollee’s right to request an external review;
- (2) The one hundred thirty day deadline for requesting an external review;
- (3) Instructions on how to request an external review; and
- (4) Where to submit the request for an external review.

In addition to these general requirements, the notice shall conform to the requirements of [~~section 432E-35;~~] sections 432E-35 and 432E-36.”

SECTION 12. Section 432E-35, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) If the commissioner determines that an enrollee is eligible for expedited external review even though the enrollee has not exhausted the health carrier’s internal review process, the health carrier shall not be required to proceed with its internal review process. The health carrier may elect to proceed with its internal review process even though the request is determined by the commissioner to be eligible for expedited external review; provided that the internal review process shall not delay or terminate an expedited external review unless the health carrier decides to reverse its adverse determination and provide coverage or payment for the health care service that is the subject of the adverse determination. Immediately after making a decision to reverse its adverse determination, the health carrier shall notify the enrollee, the enrollee’s authorized representative, the independent review organization assigned pursuant to subsection [(e);] (e), and the commissioner [in writing] of its decision. The assigned

independent review organization shall terminate the expedited external review upon receipt of notice from the health carrier pursuant to this subsection.

(e) Upon receipt of the notice pursuant to subsection [(a)] (b) or a determination of the commissioner pursuant to subsection [(e)] (d) that the enrollee meets the eligibility requirements for expedited external review, the commissioner shall immediately randomly assign an independent review organization to conduct the expedited external review from the list of approved independent review organizations qualified to conduct the external review, based on the nature of the health care service that is the subject of the adverse action and other factors determined by the commissioner including conflicts of interest pursuant to section 432E-43, compiled and maintained by the commissioner to conduct the external review and immediately notify the health carrier of the name of the assigned independent review organization."

SECTION 13. Section 514A-121.5, Hawaii Revised Statutes, is amended to read as follows:

"§514A-121.5 [M]Mediation[M]. If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If an apartment owner or the board of directors refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorney's fees."

SECTION 14. Section 514B-161, Hawaii Revised Statutes, is amended to read as follows:

"§514B-161 Mediation. (a) If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless both parties agree that one party shall pay all or a specified portion of the mediation costs. If a party refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys' fees.

(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:

- (1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;
- (2) Actions to collect assessments;
- (3) Personal injury claims; or
- (4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties.”

SECTION 15. Section 712-1240, Hawaii Revised Statutes, is amended by amending the definitions of “dangerous drugs” and “harmful drug” to read as follows:

““Dangerous drugs” means any substance or immediate precursor defined or specified as a “Schedule I substance” or a “Schedule II substance” by chapter 329, or a substance specified in section [329-18(e)(13);] 329-18(c)(14), except marijuana or marijuana concentrate.

“Harmful drug” means any substance or immediate precursor defined or specified as a “Schedule III substance” or a “Schedule IV substance” by chapter 329, or any marijuana concentrate except marijuana and a substance specified in section [329-18(e)(13);] 329-18(c)(14).”

SECTION 16. Act 151, Session Laws of Hawaii 2009, is amended by amending section 28 to read as follows:

“SECTION 28. This Act shall take effect upon approval[-]; provided that the amendments made to section 346-352, Hawaii Revised Statutes, by this Act shall not be repealed when section 346-352, Hawaii Revised Statutes, is reenacted on July 1, 2013, pursuant to section 5 of Act 92, Session Laws of Hawaii 2007.”

PART II

SECTION 17. Section 235-1, Hawaii Revised Statutes, is amended by amending the definition of “prepaid legal service plan” to read as follows:

~~“[Prepaid legal] Legal service plan” (“Plan”) means a [group legal service] plan in which the cost of the services are [prepaid] paid by [the group member] a member~~ or by some other person or organization in the member’s behalf. A [group] legal service plan is a plan by which legal services are rendered to [individual members of a group] members identifiable in terms of some common interest. A plan shall provide:

- (A) That individual members shall be afforded freedom of choice in the selection of their own attorney or attorneys to provide legal services under such plan.
- (B) For the payment of equal amounts for the cost of services rendered without regard to the identity of the attorney or attorneys selected by the plan member or members. No plan shall otherwise discriminate on the basis of such selection.”

SECTION 18. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (z) to read as follows:

“(z) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

“Unrelated business taxable income” means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a [prepaid] legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person's unrelated business taxable income."

SECTION 19. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be excluded from gross income, adjusted gross income, and taxable income:

- (1) Income not subject to taxation by the State under the Constitution and laws of the United States;
- (2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
- (3) Any compensation received in the form of a pension for past services;
- (4) Compensation paid to a patient affected with Hansen's disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen's disease;
- (5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
- (6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this chapter not to repeal or supersede any express exemption or exclusion;
- (7) Income received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty, equivalent to pay received for forty-eight drills (equivalent of twelve weekends) and fifteen days of annual duty, at an:
 - (A) E-1 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2004;
 - (B) E-2 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2005;
 - (C) E-3 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2006;
 - (D) E-4 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2007; and
 - (E) E-5 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2008;
- (8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and be-

tween the United States and a foreign country; provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft that are documented or registered under the laws of the United States;

- (9) The value of legal services provided by a ~~[prepaid]~~ legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
- (10) Amounts paid, directly or indirectly, by a ~~[prepaid]~~ legal service plan to a taxpayer as payment or reimbursement for the provision of legal services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
- (11) Contributions by an employer to a ~~[prepaid]~~ legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents;
- (12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption; and
- (13) One hundred per cent of the gain realized by a fee simple owner from the sale of a leased fee interest in units within a condominium project, cooperative project, or planned unit development to the association of owners under chapter 514A or 514B, or the residential cooperative corporation of the leasehold units.

For purposes of this paragraph:

"Fee simple owner" shall have the same meaning as provided under section 516-1; provided that it shall include legal and equitable owners;

"Legal and equitable owner", and "leased fee interest" shall have the same meanings as provided under section 516-1; and

"Condominium project" and "cooperative project" shall have the same meanings as provided under section 514C-1."

SECTION 20. Section 237-1, Hawaii Revised Statutes, is amended by amending the definition of "prepaid legal service plan" to read as follows:

"~~["Prepaid legal]~~ Legal service plan" ("Plan") means a ~~[group legal service]~~ plan in which the cost of the services are ~~[prepaid]~~ paid by ~~[the group member]~~ a member or by some other person or organization in the member's behalf. A ~~[group]~~ legal service plan is a plan by which legal services are rendered to ~~[individual members of a group]~~ members identifiable in terms of some common interest. A plan shall provide:

- (A) That individual members shall be afforded freedom of choice in the selection of their own attorney or attorneys to provide legal services under such plan.
- (B) For the payment of equal amounts for the cost of services rendered without regard to the identity of the attorney or attorneys selected by the plan member or members. No plan shall otherwise discriminate on the basis of such selection."

SECTION 21. Section 237-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply to the following persons:

- (1) Public service companies as that term is defined in section 239-2, with respect to the gross income, either actual gross income or gross income estimated and adjusted, that is included in the measure of the tax imposed by chapter 239;
- (2) Public utilities owned and operated by the State or any county, or other political subdivision thereof;
- (3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, ~~[prepaid legal services]~~ a legal service plan, or other benefits to the members of the societies, orders, or associations, and to their dependents;
- (4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended, as well as that of operating a ~~[prepaid legal services]~~ legal service plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under part XVII of chapter 346;
- (5) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare that shall include the operation of a ~~[prepaid]~~ legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
- (6) Hospitals, infirmaries, and sanitarium;
- (7) Cooperative associations incorporated under chapter 421 or Code section 521 cooperatives which fully meet the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
 - (A) The exemption shall apply only to the gross income derived from activities that are pursuant to purposes and powers authorized by chapter 421, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
 - (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all those persons shall be so taxable; and
 - (C) As used in this paragraph, "Code section 521 cooperatives" mean associations that qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;
- (8) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;
- (9) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual; provided that the exemption shall apply only to the

activities of those persons in the conduct of cemeteries and shall not apply to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of those persons; and

- (10) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations.”

SECTION 22. Section 431:1-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following contracts are not considered to be insurance for the purposes of this code:

- (1) A bond with respect to which no premium is charged or paid;
- (2) A bond or contract or undertaking in the performance of which the surety has an interest other than that of surety;
- (3) A plan or agreement between an employer and any employee or the employee’s representative, individually or collectively, by the terms of which the employer or the parties to the plan or agreement agree to contribute to the cost of nonoccupational disability benefits, medical attention, treatment or hospitalization for the employee or members of the employee’s family unless such plan is underwritten by an insurer as defined in this article;
- (4) A ~~prepaid~~ legal service plan as defined in chapter 488 other than plans in which either the ~~group~~ person or entity offering the plan or the person administering the plan is otherwise subject to this code;
- (5) Any unincorporated interindemnity or reciprocal or interinsurance contract, which qualifies under chapter 435E between members of a cooperative corporation, whose members consist only of physicians and surgeons licensed in Hawaii, which contracts indemnify solely in respect to medical malpractice claims against such members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.”

SECTION 23. Section 432:1-104, Hawaii Revised Statutes, is amended to read as follows:

“§432:1-104 **Definitions.** For the purposes of this article:

- (1) ~~[Commissioner]~~ “Commissioner” means the insurance commissioner of the State of Hawaii.
 - (2) ~~[Mutual benefit society]~~ “Mutual benefit society” is any corporation, unincorporated association, society, or entity:
 - (A) Organized and carried on for the primary benefit of its members and their beneficiaries and not for profit, and:
 - (i) Making provision for the payment of benefits in case of sickness, disability, or death of its members, or disability, or death of its members’ spouses or reciprocal beneficiaries or children, or
 - (ii) Making provision for the payment of any other benefits to or for its members,
- whether or not the amount of the benefits is fixed or rests in the discretion of the society, its officers, or any other person or persons; and the fund from which the payment of the benefits shall be defrayed is derived from assessments or dues collected

from its members, and the payment of death benefits is made to the families including reciprocal beneficiaries, heirs, blood relatives, or persons named by its members as their beneficiaries; or

- (B) Organized and carried on for any purpose, which:
 - (i) Regularly requires money to be paid to it by its members, whether the money be in the form of dues, subscriptions, receipts, contributions, assessments or otherwise, and
 - (ii) Provides for the payment of any benefit or benefits or the payment of any money or the delivery of anything of value to its members or their relatives including reciprocal beneficiaries, or to any person or persons named by its members as their beneficiaries, or to any class of persons which includes or may include its members, whether or not the amount or value of the benefit, benefits, money, or thing of value is fixed, or rests in the discretion of the society, its officers, or any other person or persons; or
- (C) Organized and carried on for any purpose, whose requirements and provisions although not identical with, are determined by the commissioner to be substantially similar to, those enumerated in subparagraphs (A) and (B).

Participating in a [prepaid] legal service plan subject to chapter 488 shall not in itself make a corporation, unincorporated association, society, or entity a mutual benefit society and subject to this article.”

SECTION 24. Section 432:2-101, Hawaii Revised Statutes, is amended to read as follows:

“§432:2-101 Scope of article. This article relates only to fraternal benefit societies, as defined herein, which desire to be authorized to pay benefits in accordance with this article after July 10, 1961. This article shall not apply to [prepaid] legal service plans subject to chapter 488 even though the plan may be offered by a fraternal benefit society.”

PART III

SECTION 25. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 26. This Act shall take effect on July 1, 2012; provided that section 9, amending section 235-2.4, Hawaii Revised Statutes, shall take effect retroactive to January 1, 2011; and provided further that the amendments made to section 235-7(a), Hawaii Revised Statutes, by section 19, shall not be repealed when section 235-7(a), Hawaii Revised Statutes, is reenacted on January 1, 2013, pursuant to Act 166, Session Laws of Hawaii 2007.

(Approved April 20, 2012.)

A Bill for an Act Relating to Child Support Enforcement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 576D-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Beginning October 1, 1998, each employer in the State shall report to the agency within twenty days of hire, the name, address, [and] social security number, and the date services for remuneration were first performed of each new employee along with the name, federal identification number, and address of the employer. Each report shall be made on a W-4 form or its equivalent, and may be transmitted by first class mail, magnetically, or electronically. If an employer is transmitting reports to the agency magnetically or electronically, the report shall be transmitted twice monthly not less than twelve days nor more than sixteen days apart. The agency shall maintain these reports as the state directory of new hires.”

SECTION 2. Section 576E-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon receipt of the copy of the notice, or upon request of the responsible parent pursuant to the order, the employer or union shall transfer the notice to the appropriate plan providing health care coverage for which the child is eligible within twenty business days after the date of the notice or enroll the dependent child as a beneficiary in the group medical insurance plan and withhold any required premium from the responsible parent’s income. If more than one plan is offered by the employer or union, the child shall be enrolled in the plan in which the responsible parent is enrolled or the least costly plan otherwise available to the responsible parent that is comparable to the plan in which the responsible parent is enrolled. An employer who has received a copy of the notice shall inform the agency when the employment of the responsible parent is terminated.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 20, 2012.)

A Bill for an Act Relating to Employer-Union Health Benefits Trust Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 87A-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Credited service” means service as an officer or employee paid by the State or county, service during the period of leave of absence or exchange if the individual is paid by the State or county during the leave of absence or ex-

change, and service during the period of unpaid leave of absence or exchange if the individual is engaged in the performance of a governmental function or if the unpaid leave of absence is an approved leave of absence for professional improvement.”

2. By amending the definitions of “employee” and “part-time, temporary, and seasonal or casual employee” to read:

““Employee” means an employee or officer of the State, county, or legislature,

(1) Including:

(A) An elective officer;

~~[(B) A per diem employee;~~

~~(C)]~~ (B) An officer or employee under an authorized leave of absence;

~~[(D)]~~ (C) An employee of the Hawaii national guard although paid from federal funds;

~~[(E)]~~ (D) A retired member of the employees’ retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;

~~[(F)]~~ (E) A salaried and full-time member of a board, commission, or agency appointed by the governor or the mayor of a county; and

~~[(G)]~~ (F) A person employed by contract for a period not exceeding one year, where the director of human resources development, personnel services, or civil service has certified that the service is essential or needed in the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures,

(2) But excluding:

(A) A designated beneficiary of a retired member of the employees’ retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;

(B) Except as allowed under paragraph ~~[(1)(G)]~~ (1)(F), a person employed temporarily on a fee or contract basis; and

(C) A part-time, temporary, and seasonal or casual employee.

“Part-time, temporary, and seasonal or casual employee” means a person employed for fewer than three months ~~[and]~~ or whose employment is less than one-half of a full-time equivalent position.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 20, 2012.)

ACT 37

H.B. NO. 2458

A Bill for an Act Relating to Conversions by Nonprofit Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 414D-207, Hawaii Revised Statutes, is repealed.

SECTION 2. Section 414D-208, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 414D-210, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed and stricken.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved April 20, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 38

H.B. NO. 2492

A Bill for an Act Relating to the Hawaii Employer-Union Health Benefits Trust Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 87A-33, Hawaii Revised Statutes, is amended to read as follows:

“§87A-33 State and county contributions; retired employees. (a) Notwithstanding any law to the contrary, this section shall apply to state and county contributions to the fund for:

- (1) The dependent-beneficiary of an employee who is killed in the performance of duty;
- (2) A dependent-beneficiary, upon the death of the employee-beneficiary, except as provided in section 87A-36;
- (3) An employee-beneficiary who retired after June 30, 1984, due to a disability falling within sections 88-79 and 88-285;
- (4) An employee-beneficiary who retired before July 1, 1984;
- (5) An employee-beneficiary who:
 - (A) Was hired before July 1, 1996;
 - (B) Retired after June 30, 1984; and
 - (C) Who has ten years or more of credited service, excluding sick leave;
- (6) An employee-beneficiary who:
 - (A) Was hired after June 30, 1996; and
 - (B) Retired with twenty-five or more years of credited service, excluding sick leave, except as provided in section 87A-36; and
- (7) Employees who retired prior to 1961 and their dependent-beneficiaries.

(b) Effective July 1, 2003, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:

- (1) \$218 for each employee-beneficiary enrolled in supplemental medicare self plans;
- (2) \$671 for each employee-beneficiary enrolled in supplemental medicare family plans;

- (3) \$342 for each employee-beneficiary enrolled in non-medicare self plans; and
- (4) \$928 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefits plan or plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

(c) Effective July 1, 2004, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:

- (1) \$254 for each employee-beneficiary enrolled in supplemental medicare self plans;
- (2) \$787 for each employee-beneficiary enrolled in supplemental medicare family plans;
- (3) \$412 for each employee-beneficiary enrolled in non-medicare self plans; and
- (4) \$1,089 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefit plan or plans and shall not be required to cover increased benefits above those initially contracted for by the fund for plan year 2004-2005. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

(d) The base composite monthly contribution shall be adjusted annually, beginning July 1, 2005. The adjusted base composite monthly contribution for each new plan year (July 1 until June 30) shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years, which percentage shall be calculated by dividing the medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect at the beginning of the previous plan year.

For the plan year beginning July 1, 2005, the adjusted base monthly contribution shall be computed using the actual contracted premium rate as of July 1, 2004, for medicare and non-medicare, self and family health benefits plans with the highest actual contracted premium rate as of July 1, 2004.

As used in this subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1 or on the business day closest to November 1 of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress.

(e) The base composite monthly contribution shall be adjusted annually, beginning January 1, 2013. The adjusted base composite monthly contribution for each new plan year (January 1 until December 31) shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years, which percentage shall be calculated by dividing the medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect at the beginning of the previous plan year.

ACT 39

For the plan year beginning January 1, 2013, the adjusted base monthly contribution shall be computed using the base composite monthly contribution as of July 1, 2012.

As used in this subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1 or on the business day closest to November 1 of each year after the medicare part B premium rate has been established by the United States Secretary of Health and Human Services and approved by the United States Congress.

~~[(e)]~~ (f) If the board adopts a rate structure that provides for other than self and family rates for the health benefit plans, the base monthly contribution for the rate structure adopted by the board shall be adjusted to provide the equivalent underwriting cost as the base monthly contribution that is provided for in this section."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 20, 2012.)

ACT 39

H.B. NO. 2578

A Bill for an Act Relating to the Advisory Council for Community Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 371K-3, Hawaii Revised Statutes is amended to read as follows:

"§371K-3 General functions, duties, and powers of the executive director.

The executive director shall:

- (1) Serve as the principal official in state government responsible for the coordination of programs for the needy, poor, and disadvantaged persons, refugees, and immigrants;
- (2) Oversee, supervise, and direct the performance by subordinates of activities in such areas as planning, evaluation, and coordination of programs for disadvantaged persons, refugees, and immigrants and development of a statewide service delivery network;
- (3) Assess the policies and practices of public and private agencies impacting on the disadvantaged and conduct advocacy efforts on behalf of the disadvantaged, refugees, and immigrants;
- (4) Devise and recommend legislative and administrative actions for the improvement of services for the disadvantaged, refugees, and immigrants;
- (5) Serve as a member of advisory boards and panels of state agencies in such areas as child development programs, elder programs, social services programs, health and medical assistance programs, refugee assistance programs, and immigrant services programs;
- (6) Administer funds allocated for the office of community services; and apply for, receive, and disburse grants and donations from all sources for programs and services to assist the disadvantaged, refugees, and immigrants;

- (7) Adopt, amend, and repeal rules pursuant to chapter 91 for purposes of this chapter;
- (8) Retain such staff as may be necessary for the purposes of this chapter, who may be exempt from chapter 76; and
- (9) Contract for services as may be necessary for the purposes of this chapter[;
- (10) ~~Orient members of the advisory council to the goals, functions, and programs of the office; and~~
- (11) ~~Seek the input of council members on all matters pertaining to the functions of the office].”~~

SECTION 2. Section 371K-5, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 371K-6, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 20, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 40

H.B. NO. 2547

A Bill for an Act Making an Emergency Appropriation to the Department of Human Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. A critical funding emergency exists. The general assistance program (HMS 204) will expend all appropriated funds before the end of the current fiscal year 2011-2012. Pursuant to section 346-53(b), Hawaii Revised Statutes, the general assistance program is a block grant program; the maximum allowance a general assistance recipient may receive is determined by dividing the amount of the appropriation by the number of general assistance recipients.

Due to increasing general assistance caseloads, the department reduced monthly general assistance payments in October 2011 from \$344 to \$319 a month. Caseloads continue to rise and the department is unable to maintain the current maximum \$319 per month general assistance payment benefit to approximately 5,584 disabled recipients for the duration of the funding year. In the absence of an emergency appropriation, general assistance payments will be reduced to \$268 a month in March 2012. This amount is not enough to cover living and housing expenses for individuals who have no other viable means of support.

Stopping the grant payment or reducing the amount of the grant payment for these individuals poses a real threat to the individuals' health and safety

ACT 41

and is likely to result in increased homelessness. To avoid further reductions of general assistance payments, additional funds are urgently needed.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$736,478 or so much thereof as may be necessary for fiscal year 2011-2012 to be used for general assistance payments (HMS 204).

SECTION 4. The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 20, 2012.)

ACT 41

H.B. NO. 2539

A Bill for an Act Relating to Adult Abuse Perpetrator Checks for Child Care Providers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-152.5, Hawaii Revised Statutes, is amended to read as follows:

“[§346-152.5]] Criminal history [and] record checks, child abuse record checks, and adult abuse perpetrator checks for persons exempt pursuant to section 346-152. To be eligible to provide child care and to receive a child care subsidy from the department, persons exempt pursuant to section 346-152 shall be required to agree to a criminal history record check [and], a child abuse record check, and an adult abuse perpetrator check in the same manner as a prospective applicant or licensed provider in accordance with section 346-154; provided that the following relatives of the child who requires care: grandparents, great-grandparents, aunts, uncles, and siblings aged eighteen or older living in a separate residence shall be required to agree to a criminal history record check conducted through files maintained by the Hawaii criminal justice data center [and], a child abuse record check[-], and an adult abuse perpetrator check.

For the purposes of this section, “adult abuse perpetrator check” means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual’s name and birth date in the department’s adult protective services file.”

SECTION 2. Section 346-154, Hawaii Revised Statutes is amended to read as follows:

“§346-154 Criminal history [and] checks, child abuse record checks[-], and adult abuse perpetrator checks. (a) The department shall develop standards to ensure the reputable and responsible character of an applicant to operate a child care facility, prospective employees of the applicant, and new employees of the provider after registration or licensure, which shall include criminal history record checks in accordance with section 846-2.7 [and], child abuse record checks[-], and adult abuse perpetrator checks.

For the purposes of this section, “adult abuse perpetrator check” means a search to determine whether an individual is known to the department as a per-

petrator of abuse as defined in section 346-222, by means of a search of the individual's name and birth date in the department's adult protective services file.

- (b) An applicant to operate a child care facility shall:
- (1) Be subject to criminal history record checks in accordance with section 846-2.7;
- (2) Submit to the department under penalty of law, statements signed by the applicant and prospective employees of the applicant indicating whether the applicant or any of the prospective employees has ever been confirmed to have abused or neglected a child~~[;]~~ or vulnerable adult, including threatened harm; and
- (3) Provide consent to the department to conduct a criminal history record check in accordance with section 846-2.7 ~~[and]~~, a child abuse record check, and an adult abuse perpetrator check, and to obtain criminal history ~~[and]~~ information, child abuse record information, and adult abuse perpetrator information for verification.
- (c) A provider shall:
- (1) Be subject to criminal history record checks in accordance with section 846-2.7;
- (2) Submit to the department a statement signed by any employee hired after the initial licensure or registration that requires the employee to indicate under penalty of law, whether the employee has ever been confirmed to have abused or neglected a child~~[;]~~ or vulnerable adult, including threatened harm; and
- (3) Provide consent to the department or its designee to conduct a criminal history record check in accordance with section 846-2.7 ~~[and]~~, a child abuse record check, and an adult abuse perpetrator check, and to obtain criminal history ~~[and]~~ information, child abuse record information and adult abuse perpetrator check information for verification.
- (d) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section 846-2.7, and child abuse record information and adult abuse perpetrator check information from the department in accordance with departmental procedures on the applicant and any prospective employee of the applicant, including any new employee retained after the applicant is issued a registration or license under this part, which shall include an annual name inquiry into the state criminal history record files.
- (e) The department may deny an application for a license or registration to operate a child care facility if:
 - (1) The applicant or any prospective employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child~~[;]~~ or vulnerable adult, including threatened harm; and
 - (2) The department finds that the criminal history or child abuse record or adult abuse perpetrator check record of that applicant or prospective employee indicates that the applicant or prospective employee may pose a risk to the health, safety, or well-being of children.
- (f) The department may request the provider to terminate the employment of a new employee or may suspend or revoke the license or registration of the provider who employs a new employee if:
 - (1) The employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been confirmed to have abused or neglected a child or vulnerable adult, including threatened harm; and

- (2) The department finds that the criminal history or child abuse record or adult abuse perpetrator check record of the new employee indicates that the new employee may pose a risk to the health, safety, or well-being of children."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 20, 2012.)

ACT 42

S.B. NO. 2229

A Bill for an Act Relating to Vaccinations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 125, Session Laws of Hawaii 2010, was adopted to form a task force convened by the Hawaii state board of pharmacy to research, assess, plan, and evaluate, among other things:

- (1) The potential benefits and drawbacks of reducing the age restrictions that prevent children from receiving vaccines from pharmacists;
- (2) The most effective means to reduce such age restrictions;
- (3) Whether additional education or certification requirements would be necessary or recommended to allow pharmacists to administer vaccines to children;
- (4) Schemas of vaccination age restrictions of other states that allow vaccination of minors by pharmacists in all or limited circumstances; and
- (5) The feasibility of implementing recommended changes.

The task force developed the recommendation that with a physician's prescription, and provided that certain educational requirements are met, pharmacists be allowed to administer the influenza vaccine to a person between fourteen and seventeen years of age.

The purpose of this Act is to enact a recommendation made by the immunizations task force established pursuant to Act 125, Session Laws of Hawaii 2010, to allow pharmacists to administer the influenza vaccine to persons between fourteen and seventeen years of age, under certain conditions.

SECTION 2. Chapter 461, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§461- Influenza vaccinations; children. (a) A pharmacist may administer the influenza vaccine to persons between fourteen and seventeen years of age pursuant to a valid prescription. The pharmacist shall verify that the prescriber or the prescriber's authorized agent is the patient's medical home.

(b) After the vaccination is administered, the pharmacist shall immediately provide to the patient a vaccination record including but not limited to the following information:

- (1) The patient's name and date of birth;
- (2) The type of vaccine administered; and
- (3) The date and location on which the vaccine was administered.

(c) The pharmacist shall provide within seventy-two hours to the medical home and within five business days to the department of health immunization registry the same information provided to the patient pursuant to subsection (b) as well as the following:

- (1) The name of the vaccine product that was administered, including the manufacturer, lot number, and expiration date;
- (2) The method of administration; and
- (3) The anatomical site of administration.

(d) All pharmacists who administer the influenza vaccine to persons between the ages of fourteen and seventeen years shall complete a training program approved by the Accreditation Council of Pharmacy Education for which a certificate of completion is issued. The pharmacist shall complete the training program and submit the completion certificate for the training program to the board prior to administering the influenza vaccine to persons between the ages of fourteen and seventeen years.

(e) For the purposes of this section, “medical home” means the primary care physician who, working in collaboration with the family, oversees the acute, chronic, and preventive health needs of the patient in a comprehensive, coordinated, and continuous fashion.”

SECTION 3. Section 461-1, Hawaii Revised Statutes, is amended by amending the definition of “practice of pharmacy” to read as follows:

““Practice of pharmacy” means:

- (1) The interpretation and evaluation of prescription orders; the compounding, dispensing, and labeling of drugs and devices (except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially legend drugs and devices); the participation in drug selection and drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records therefore; the responsibility for advising when necessary or where regulated, of therapeutic values, content, hazards, and use of drugs and devices;
- (2) Performing the following procedures or functions as part of the care provided by and in concurrence with a “health care facility” and “health care service” as defined in section 323D-2, or a “pharmacy” or a licensed physician, or a “managed care plan” as defined in section 432E-1, in accordance with policies, procedures, or protocols developed collaboratively by health professionals, including physicians and surgeons, pharmacists, and registered nurses, and for which a pharmacist has received appropriate training required by these policies, procedures, or protocols:
 - (A) Ordering or performing routine drug therapy related patient assessment procedures;
 - (B) Ordering drug therapy related laboratory tests;
 - (C) Initiating emergency contraception oral drug therapy in accordance with a written collaborative agreement approved by the board, between a licensed physician and a pharmacist who has received appropriate training that includes programs approved by the American Council of Pharmaceutical Education (ACPE), curriculum-based programs from an ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy;
 - (D) Administering drugs orally, topically, by intranasal delivery, or by injection, pursuant to the patient’s licensed physician’s or-

der, by a pharmacist having appropriate training that includes programs approved by the ACPE, curriculum-based programs from an ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy;

- (E) Administering immunizations:
 - (i) Immunizations orally, by injection, or by intranasal delivery, to persons eighteen years of age or older[5] by a pharmacist having appropriate training that includes programs approved by the ACPE, curriculum-based programs from an ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy; and
 - (ii) The influenza vaccine to persons between fourteen and seventeen years of age pursuant to section 461- ;
- (F) As authorized by a licensed physician's written instructions, initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's licensed physician and related to the condition for which the patient has been seen by the licensed physician; provided that the pharmacist shall issue written notification to the patient's licensed physician or enter the appropriate information in an electronic patient record system shared by the licensed physician, within twenty-four hours;
- (G) Transmitting a valid prescription to another pharmacist for the purpose of filling or dispensing; or
- (H) Providing consultation, information, or education to patients and health care professionals based on the pharmacist's training and for which no other licensure is required; and
- (3) The offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy."

SECTION 4. Section 461-8, Hawaii Revised Statutes, is amended to read as follows:

"§461-8 Renewal of licenses; continuing education requirement. (a) All licenses issued by the board, except temporary licenses issued under section 461-7, shall be renewed biennially on or before December 31 of each odd-numbered year. Failure to pay the biennial fee and, beginning with the renewal for the licensing biennium commencing on January 1, 2008, to satisfy the continuing education requirement on or before December 31 of each odd-numbered year, shall constitute a forfeiture of the license as of the date of expiration.

(b) Any license forfeited pursuant to subsection (a) may be restored within three years upon payment of any penalty fee, the current biennial fees, and the renewal fee for the next biennium, if applicable, upon submission of proof of compliance with the continuing education requirement for the prior biennium, and upon meeting any other requirements specified in rules adopted pursuant to chapter 91.

(c) In the event that the pharmacist has not engaged in the practice of pharmacy in this State or in another state or territory of the United States within the past five years, the board may require the pharmacist to satisfy additional requirements, as specified in rules adopted pursuant to chapter 91, to demonstrate that the pharmacist is competent to practice in this State.

(d) Beginning with the renewal for the licensing biennium commencing on January 1, 2008, and every biennial renewal thereafter, each licensee shall have completed thirty credit hours in continuing education courses within the two-year period preceding the renewal date, regardless of the licensee's initial date of licensure; provided that a licensee who has graduated from an accredited pharmacy school within one year of the licensee's first license renewal period shall not be subject to the continuing education requirement for the first license renewal. The board may extend the deadline for compliance with the continuing education requirement based on any of the following:

- (1) Illness, as certified by a physician or osteopathic physician licensed under chapter 453 or licensed in the jurisdiction in which the licensee was treated;
- (2) Military service under extended active duty with the armed forces of the United States;
- (3) Lack of access to continuing education courses due to the practice of pharmacy in geographically isolated areas; and
- (4) Inability to undertake continuing education due to incapacity, undue hardship, or other extenuating circumstances.

(e) A pharmacist who administers the influenza vaccine to persons between the ages of fourteen and seventeen years shall complete a training program approved by the board within every other biennial renewal period and submit proof of successful completion of the training program to the board; provided that the pharmacist shall meet these requirements prior to administering the influenza vaccine to persons between the ages of fourteen and seventeen years.

~~[(e)]~~ (f) Each licensee shall maintain the licensee's continuing education records. At the time of renewal, each licensee shall certify under oath that the licensee has complied with the continuing education requirement of this section. The board may require a licensee to submit, in addition to the certification, evidence satisfactory to the board that demonstrates compliance with the continuing education requirement of this section.

~~[(f)]~~ (g) The board may conduct random audits to determine compliance with the continuing education requirement. The board shall provide written notice of an audit to a licensee randomly selected for audit. Within sixty days of notification, the licensee shall provide the board with documentation verifying compliance with the continuing education requirement."

SECTION 5. Section 461-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other actions authorized by law, the board shall have the power to deny, revoke, or suspend any license or permit applied for or issued by the board in accordance with this chapter, and to fine or otherwise discipline a licensee or permit holder for any cause authorized by law, including but not limited to the following:

- (1) Procuring a license through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross carelessness, or manifest incapacity;
- (3) Permitting an unlicensed person to perform activities ~~[which]~~ that require a license under this chapter;
- (4) Violation of any of the provisions of this chapter or the rules adopted pursuant thereto;
- (5) Violation of any state or federal drug, controlled substance, or poison law;
- (6) False, fraudulent, or deceptive advertising;
- (7) Any other conduct constituting fraudulent or dishonest dealings;

- (8) Failure to comply with a board order;
- (9) Making a false statement on any document submitted or required to be filed by this chapter, including a false certification of compliance with the continuing education requirement; [øf]
- (10) Habitual intemperance or addiction to the use of habit-forming drugs[-]; or
- (11) Administering the influenza vaccine to a person between fourteen and seventeen years of age without complying with section 461- .”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved April 20, 2012.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 43

H.B. NO. 2628

A Bill for an Act Relating to the Residential Landlord-Tenant Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 521-7, Hawaii Revised Statutes, is amended to read as follows:

“§521-7 Exclusions from application of chapter. Unless created solely to avoid the application of this chapter, this chapter shall not apply to:

- (1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, geriatric, educational, religious, or similar services;
- (2) Residence in a structure directly controlled and managed by [the]:
 - (A) The University of Hawaii or any other university or college in the State for housing its own students or faculty [øf the University of Hawaii] or residence in a structure erected on land leased from the [University of Hawaii] university or college by a nonprofit corporation for the exclusive purpose of housing students or faculty of the [University of Hawaii:] college or university; or
 - (B) A private dorm management company that offers a minimum of fifty beds to students of any college, university, or other institution of higher education in the State;
- (3) Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser;
- (4) Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization;
- (5) Transient occupancy on a day-to-day basis in a hotel or motel;
- (6) Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon that employment or by a pensioner of the owner or landlord or occupancy for a period of up to four

- years subsequent thereto, pursuant to a plan for the transfer of the dwelling unit or the property of which it is a part to the occupant;
- (7) A lease of improved residential land for a term of fifteen years or more, measured from the date of the commencement of the lease;
 - (8) Occupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner's rights;
 - (9) Occupancy in a homeless facility or any other program for the homeless authorized under part XVII of chapter 346;
 - (10) Residence or occupancy in a public housing project or complex directly controlled, owned, or managed by the Hawaii public housing authority pursuant to the federal low rent public housing program; or
 - (11) Residence or occupancy in a transitional facility for abused family or household members."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2012.)

ACT 44

H.B. NO. 1698

A Bill for an Act Relating to Qualified Community Rehabilitation Programs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 213, Session Laws of Hawaii 2008, is amended by repealing section 2.

~~["SECTION 2. The department of human resources development shall report annually to the legislature, no later than twenty days prior to the convening of each regular session beginning with the regular session of 2009, on expenditures of qualified community rehabilitation programs and related activities."]~~

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2012.)

ACT 45

H.B. NO. 2254

A Bill for an Act Relating to the Pretax Transportation Benefit.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the department of human resources development currently operates a pretax transportation benefit pilot program in the city and county of Honolulu for any employee of the state government who:

- (1) Is an employee of the State executive branch (excluding the department of education) who is eligible to participate in the State of Hawaii employees' retirement system;
- (2) Lives and works on Oahu; and
- (3) Does not have parking in a state-controlled lot with a parking payroll deduction.

The pilot program is operated under the State's qualified transportation fringe benefit plan, in accordance with section 132(f) of the Internal Revenue Code, and authorized under the federal Transportation Equity Act for the 21st Century for eligible State of Hawaii executive branch employees. This means that eligible employees may purchase public bus passes, Handi-Van fare coupons, and vouchers for the cost of their vanpool Hawaii seat fares through payroll deductions before federal, State, and Federal Insurance Contributions Act taxes are withheld, thereby increasing their take-home pay. In other words, an eligible employee on Oahu may authorize the State to have the employee's bus pass expense, the cost of a preset amount of Handi-Van fare coupons, or vanpool Hawaii seat fees deducted from the employee's paycheck on a pretax basis. The State, as employer, will purchase bus passes, Handi-Van fare coupons, or vouchers redeemable with vanpool Hawaii to cover seat fees for eligible employees and distribute them to eligible employees on a monthly basis. As of June 2008, the enrollment for senior and disability annual bus passes was also included in the pilot program.

The duration of the pilot program is determined by the director of human resources development, and as of 2008, the maximum allowance per month for combined commuter highway vehicle transportation and transit pass expenses was \$115.

The savings for each employee will vary depending on the employee's tax bracket. For example, based on an annual salary of \$24,000, a tax savings of \$138.24, \$253.68, or \$181.53 can be gained through participation in the pilot transportation benefit plan for eligible employees who buy bus passes, ride the Handi-Van, or carpool via vanpool Hawaii, respectively.

The legislature finds that the pilot program has been successful on Oahu and should be expanded to other jurisdictions of the State.

The purpose of this Act is to allow the chief executive of certain jurisdictions of the state, including the counties, to establish a wage and salary reduction benefit program which qualifies as a pretax transportation benefit program within the meaning of section 132 of the Internal Revenue Code of 1986, as amended.

SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§78- Pretax transportation benefit program. (a) Each chief executive may establish a wage and salary reduction benefit program which qualifies as a pretax transportation benefit program within the meaning of section 132 of the Internal Revenue Code of 1986, as amended. The pretax transportation benefit program shall allow eligible employees to elect to reduce their pretax compensation in return for payment by the jurisdiction of the expenses of eligible benefits.

(b) In addition to any other powers and duties authorized by law, each chief executive may enter into all contracts necessary to establish, administer, or maintain the pretax transportation benefit programs."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved April 23, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 46

S.B. NO. 2337

A Bill for an Act Relating to Transportation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that modernization and improvements at Hawaii's airport concessions have not kept pace with passenger needs and demands. A recent study by the State indicates that various areas at our public airports are lacking in concession space by as much as forty per cent. In addition to areas covered by this study, the legislature requests that the department of transportation should also make a similar assessment of other areas at our public airports.

In addition to not meeting such needs and demands, the study indicates that Hawaii's public airports are not maximizing the revenues they could be receiving from airport concession operations if additional concession spaces were provided and locations were also improved. These improvements reportedly would not only pay for themselves but would also generate additional revenues for Hawaii's public airports.

As a result, the legislature finds that the department of transportation needs to fast-track construction and encourage improvements which will not only benefit Hawaii's public airports but also provide critical jobs and help stimulate Hawaii's economy. The legislature will consider and support the department of transportation's requests to meet these goals.

While the legislature recognizes the importance of fast-tracking such improvements, it also recognizes that fast-paced construction and related matters will result in hardship to existing airport concessions with inconveniences such as temporary barricades, re-routing of passengers, and temporary relocation of concession operations, among other issues.

In addition, the legislature recognizes the financial hardships existing concessions will face when asked by the department of transportation to make and pay for improvements to these newly-added concession spaces or improved areas for items such as fixturing, lighting, flooring, partitioning, and equipment, among other expenditures.

Further, the legislature also recognizes that concessions may not be able to afford to make these improvements for various reasons. In a typical scenario, the concession would not be able to recoup the money it paid for improvements because the existing or remaining term of a concession lease or permit is too short.

Thus, the legislature finds that it is important that the department of transportation and concessions seek to work together in achieving the improvements contemplated by this Act in an expeditious but fair and equitable manner, including amendments extending the term of a concession lease or permit at the department of transportation's discretion. Since such amendments or changes cannot be simply granted by the department of transportation, legislative direction and authorization is necessary as provided for in this Act.

The purpose of this Act is to provide the department of transportation with the authority and discretion to reach an agreement with an airport concession to extend the term of the concession and to modify and amend terms of any concession contract, lease, or permit in exchange for revenue-enhancing improvements that are made or paid for by the concession.

SECTION 2. Notwithstanding any laws or provisions to the contrary, including but not limited to chapters 102 and 261, Hawaii Revised Statutes, the department of transportation, in its sole discretion and authority, upon mutual agreement with a concession and in exchange for revenue-enhancing improvements that are made or paid by the concession deemed acceptable by the department of transportation, may extend, modify, alter, or amend the terms of concession contracts, leases, and permits.

SECTION 3. The authority provided to the department of transportation by this Act shall remain valid as long as and to the extent that such authority does not violate any applicable federal laws and regulations and does not jeopardize the receipt of federal aid or impair the obligation of the department of transportation to the holders of any bond issued by the department of transportation.

SECTION 4. To the extent necessary to take action, effectuate, and fulfill the purpose and intentions of this Act including the authority provided, section 171-13 and chapters 102 and 261, Hawaii Revised Statutes, as well as any other statutory provisions or rules that may be in conflict with this Act, shall be deemed waived and not applicable.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act, which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable.

SECTION 6. This Act shall take effect on July 1, 2012, and shall be repealed on July 1, 2014.

(Approved April 23, 2012.)

ACT 47

S.B. NO. 2874

A Bill for an Act Relating to Airport Revenue.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Under both state law and federal regulation, the State's airport system is required to be economically self-supporting. To meet this requirement, the department of transportation relies on revenue from airline operations, facility and space rental from aeronautical and airport-related users, revenues from concessions, and, to a very small extent, facility and space rentals from non-aeronautical or non airport related users.

In the late 1980s and early 1990s, Hawaii was a prime destination for Japanese travelers and Hawaii's airports benefited from unprecedented concession revenues due primarily to almost \$2,000,000,000 in revenue from the in-bond (duty free) concession over a thirteen-year period. At the very height

of the in-bond boom in 1993, revenue from this single concession was over \$300,000,000. From June 1, 1994, through May 31, 2001, the annual fiscal year revenue from the in-bond concession never dropped below \$100,000,000.

All of that changed with the contract that began in June 2001. Due to changes in the Japanese market, the minimum annual guaranteed concession fee from the in-bond concession contract dropped to \$60,000,000 per year. The events of September 11, 2001, caused a further reduction in concession revenue across the board. Today, while the in-bond concession is still the largest single revenue generating concession, the guaranteed revenue from that concession is now \$35,300,000 annually.

Over time, revenues from other concessions have increased, but not enough to offset the change in the in-bond concession. In fiscal year 2009-2010, overall concession revenue was more than \$127,000,000, but that still is more than \$100,000,000 less than at the peak of the in-bond concession.

To help offset the decline in concession revenues, revenues from landing fees, aeronautical and airport-related rentals, and non-aeronautical rentals have increased. While aeronautical and airport-related revenues have increased, the recent merger of airlines, e.g., Delta and Northwest, and United and Continental, and the loss of Aloha Airlines and ATA in 2008, reduced the overall amount of real estate rented by the airlines.

The smallest of the revenue generators is by far non aeronautical rentals. This revenue segment could be increased, without changing the nature of airports, by allowing additional flexibility in contracting with such users. For example, the department of transportation acquired portions of Ualena street in the 1990s for expansion of Honolulu International Airport. The acquisition was made subject to the existing land leases that terminate at the end of 2012.

Some of the lessees at the time of the acquisition were relocated, with the vacated space being rented to others. Since the acquisition, several entities inquired about renting space but wanted to have the security of a five-year, or longer, lease. Given the nature of the proposed non-aeronautical use of the property, the department of transportation was prohibited from directly negotiating such an agreement by section 171-59, Hawaii Revised Statutes. Similar circumstances have arisen at other airports as well.

Given the challenges in the economy and the continuing efforts by the airlines to reduce costs throughout their operations, increasing the opportunities for revenue generation at airports from non-aeronautical users is essential to the maintenance of a healthy and self-supporting airport system.

SECTION 2. Section 171-59, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Disposition of public lands for airline, aircraft, airport-related, agricultural processing, cattle feed production, aquaculture, marine, maritime, and maritime-related operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that:

- (1) The disposition encourages competition within the aeronautical, airport-related, agricultural, aquaculture, maritime, and maritime-related operations;
- (2) The disposition shall not exceed a maximum term of thirty-five years, except in the case of:
 - (A) Maritime and maritime-related operations, which may provide for a maximum term of seventy years; and
 - (B) Aquaculture operations, which may provide for a maximum term of sixty-five years; provided that aquaculture operations in good standing may seek to renew a lease issued under this

section and, during the lease term, may engage in supportive activities that are related to or integrated with aquaculture; and

- (3) The method of disposition of public lands for cattle feed production as set forth in this subsection shall not apply after December 31, 1988.

For the purposes of this subsection:

“Agricultural processing” means the processing of agricultural products, including dairying, grown, raised, or produced in Hawaii.

“Airport-related” means a purpose or activity that requires air transportation to achieve that purpose or activity~~[-]; or an activity that generates revenue for the airport system as provided in section 261-7.~~

“Aquaculture” means the propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments for research, commercial, or stocking purposes, including aquaponics or any growing of plants or animals with aquaculture effluents.

“Maritime-related” means a purpose or activity that requires and is directly related to the loading, off-loading, storage, or distribution of goods and services of the maritime industry.”

SECTION 3. Section 261-7, Hawaii Revised Statutes is amended by amending subsection (a) to read as follows:

“(a) In operating an airport or air navigation facility owned or controlled by the department of transportation, or in which it has a right or interest, the department may enter into contracts, leases, licenses, and other arrangements with any person:

- (1) Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;
- (2) Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility;
- (3) Making available services, facilities, goods, commodities, or other things to be furnished by the department or its agents at the airport or air navigation facility; or
- (4) Granting the use and occupancy ~~[on a temporary basis by license or otherwise]~~ of any portion of the land under its jurisdiction ~~[which for the time being]~~ that may not be required by the department for aeronautics purposes so that it may instead put the area to economic use and thereby derive revenue therefrom.

~~[All the arrangements shall contain a clause that the land may be repossessed by the department when needed for aeronautics purposes upon giving the tenant temporarily occupying the same not less than thirty days’ notice in writing of intention to repossess.]~~

The term “airport purpose” or “airport purposes” contained in any governor’s executive order transferring jurisdiction and control of real property to the department of transportation shall be considered to include entering into contracts, leases, licenses, and other arrangements pursuant to this section.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2012; provided that the amendments made to section 261-7(a), Hawaii Revised Statutes, by section 3

of this Act, shall not be repealed when section 261-7, Hawaii Revised Statutes, is reenacted on June 30, 2012, pursuant to Act 104, Session Laws of Hawaii 2011.

(Approved April 23, 2012.)

ACT 48

H.B. NO. 1744

A Bill for an Act Relating to Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The commission on salaries was established by constitutional amendment that was ratified by Hawaii voters in 2006. The commission is charged with reviewing and recommending salaries for state justices and judges, legislators, the governor, the lieutenant governor, and specified appointed officials within the executive branch. The commission convened in 2006 and submitted its report and recommendations to the legislature in 2007 with a schedule of salary recommendations. By constitutional law, the salaries recommended and submitted by the commission become effective as provided in the recommendation, unless the legislature disapproves the recommendation in its entirety. The legislature did not disapprove the recommendations of the commission convened in 2006.

The legislature notes that the commission's salary recommendations specify a July 1, 2007, effective date for executive and judicial branch official salaries, and a January 1, 2009, effective date for legislator salaries. The state constitution provides that any change in salary that becomes effective shall not apply to the legislature to which the recommendation for the change in salary was submitted.

The legislature finds that Act 57, Session Laws of Hawaii 2011, establishes a July 1, 2009, until December 31, 2013, salary reduction period for all positions under the Act, but applies different salary provisions to those positions after that period. This has raised concern as to whether those provisions comport with article XVI, section 3.5, of the state constitution, which prohibits the salaries from being decreased during a term of office except by general law applying to all salaried officers of the State.

The legislature also finds that Act 57 also extends the five per cent salary reduction until December 31, 2013, for all salaries but does not address the impact of the reductions on the 2012 commission's recommendations for the executive and judicial salaries for the period July 1, 2013, through December 31, 2013, thus resulting in a possible conflict between the 2011 law and the next commission's recommendations.

The next commission on salaries will convene in 2012 and will submit its report and recommendations to the 2013 legislature. It is the intent that the 2013 legislature deliberate the range of issues related to salary levels that may be recommended by the 2012 commission after those salaries are proposed.

The purpose of this Act is to resolve the ambiguity and concerns arising from provisions contained in Act 57, Session Laws of Hawaii 2011, by:

- (1) Amending the salary reduction period to reflect that it is effective through June 30, 2013;
- (2) Deleting provisions relating to the restoration of salaries to what they would have been on July 1, 2009, but for the salary reductions provided by Act 85, Session Laws of Hawaii 2009, as amended by Act 57, Session Laws of Hawaii 2011; and

- (3) Deleting provisions relating to the salary commission that convenes in 2012 as unnecessary, inasmuch as existing provisions set forth the scope of its mandate.

SECTION 2. Section 2 of Act 85, Session Laws of Hawaii 2009, as amended by section 1 of Act 57, Session Laws of Hawaii 2011, is amended to read as follows:

“SECTION 2. (a) Notwithstanding any law to the contrary and notwithstanding the recommendations of the commission on salaries convened in 2006 for salary increases, beginning July 1, 2009, and ~~[until December 31,]~~ through June 30, 2013, the annual salaries of the governor, the lieutenant governor, the justices and judges of all state courts, the administrative director of the State or an equivalent position, and the department heads or executive officers and the deputies or assistants to the department heads or executive officers of the departments of:

- (1) Accounting and general services;
- (2) Agriculture;
- (3) The attorney general;
- (4) Budget and finance;
- (5) Business, economic development, and tourism;
- (6) Commerce and consumer affairs;
- (7) Defense;
- (8) Hawaiian home lands;
- (9) Health;
- (10) Human resources development;
- (11) Human services;
- (12) Labor and industrial relations;
- (13) Land and natural resources;
- (14) Public safety;
- (15) Taxation; and
- (16) Transportation,

shall be reduced by five per cent from what the salary is as of June 30, 2009, and shall remain at that salary rate ~~[until December 31,]~~ through June 30, 2013 ~~;~~ provided that on January 1, 2014, the salaries of these positions shall be restored to the level they would have been on July 1, 2009, without the salary decrease under this Act; provided further that if any salary recommendations for these positions are made and are to take effect on or after January 1, 2014, by the commission on salaries, and the recommendations are not disapproved by the legislature, then the salary recommendations shall become effective on the date specified by the commission on salaries in accordance with its recommendations.

(b) Notwithstanding any law to the contrary and notwithstanding the recommendations of the commission on salaries convened in 2006 for salary increases, beginning July 1, 2009, and ~~[until December 31,]~~ through June 30, 2013, the annual salaries of members of the legislature shall be reduced by five per cent from what the salary is as of June 30, 2009 ~~;~~ provided that the salary recommendations of the commission on salaries for legislators effective January 1, 2014, shall become effective on that date in accordance with the recommendations. and shall remain at that salary rate through June 30, 2013.

(c) For the period from July 1, 2009, ~~[to December 31,]~~ through June 30, 2013, notwithstanding any law to the contrary, the leaves of absence for vacation and sick leave, with pay, of persons affected under subsections (a) and (b) shall be the same as those negotiated, mediated, or arbitrated under chapter 89, Hawaii Revised Statutes, for collective bargaining unit (13) ~~;~~ provided that on

~~January 1, 2014, the leaves of absence under this subsection shall be either: restored to the level they would have been on July 1, 2009, but for this subsection; or commensurate with any salary adjustment recommended for any period on or after January 1, 2014, by the commission on salaries and not disapproved by the legislature].~~

(d) This section shall not be construed to impart any right to additional compensation previously authorized through the adoption of the recommendations of the commission on [salaries' recommendations] salaries convened in 2006, for the period from [January 1, 2009,] July 1, 2007, through [December 31,] June 30, 2013, for positions covered under subsections (a) and (b).

(e) This section shall not be enforced to the extent that it is preempted by federal law."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that:

- (1) Act 85, Session Laws of Hawaii 2009, as amended by Act 57, Session Laws of Hawaii 2011, as amended by this Act shall be repealed at 11:59 p.m. on June 30, 2013;
- (2) The repeal of Act 85, Session Laws of Hawaii 2009, as amended by Act 57, Session Laws of Hawaii 2011, as amended by this Act shall not be construed to restore or reinstate for the period of July 1, 2009, through June 30, 2013, any leaves of absence for vacation or sick leave, any salary reduction incurred during the period specified in this paragraph, or any other compensation reduced by the aforementioned Acts; and
- (3) On July 1, 2013, and thereafter, unless modified by the adoption of the recommendations of the commission on salaries scheduled to convene in 2012, all salaries reduced by Act 85, Session Laws of Hawaii 2009, as amended by Act 57, Session Laws of Hawaii 2011, as amended by this Act, and notwithstanding section 26-56(d), Hawaii Revised Statutes, shall be at the rates provided for by the recommendations, dated March 14, 2007, of the commission on salaries convened in 2006.

(Approved April 23, 2012.)

ACT 49

S.B. NO. 2671

A Bill for an Act Relating to Collective Bargaining.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 89-5, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The chairperson of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, attorneys, paralegals, mediators, arbitrators, and hearing officers, and [employ other assistants] other personnel as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriate

tions therefor. Section 28-8.3 notwithstanding, ~~an~~ any attorney employed by the board as a full-time, part-time, or contract staff member may represent the board in litigation, draft legal documents for the board, and provide other necessary legal services to the board and shall not be deemed to be a deputy attorney general."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2012.)

ACT 50

H.B. NO. 2602

A Bill for an Act Relating to Credit for Time of Detention Prior to Sentence.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 706-671, Hawaii Revised Statutes, is amended to read as follows:

"§706-671 Credit for time of detention prior to sentence; credit for imprisonment under earlier sentence for same crime. (1) When a defendant who is sentenced to imprisonment has previously been detained in any State or local correctional or other institution following the defendant's arrest for the crime for which sentence is imposed, such period of detention following the defendant's arrest shall be deducted from the minimum and maximum terms of such sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the defendant prior to sentence in any State or local correctional or other institution, and the certificate shall be annexed to the official records of the defendant's commitment.

(2) When a judgment of conviction or a sentence is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the minimum and maximum terms of the new sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant's new commitment.

(3) Notwithstanding any other law to the contrary, when a defendant is convicted for a crime committed while serving a sentence of imprisonment on a separate unrelated felony conviction, credit for time being served for the term of imprisonment imposed on the defendant for the separate unrelated felony conviction shall not be deducted from the term of imprisonment imposed on the defendant for the subsequent conviction."

SECTION 2. The prohibition in this Act against deducting the time served on a separate unrelated felony from the sentence imposed for a crime committed while in prison for the separate unrelated felony shall not apply when the crime committed while in prison for the separate unrelated felony, was committed prior to the effective date of this Act.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved April 23, 2012.)

ACT 51

H.B. NO. 2598

A Bill for an Act Relating to Pre-Sentence Reports.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 706-602, Hawaii Revised Statutes, is amended to read as follows:

“§706-602 Pre-sentence diagnosis, notice to victims, and report. (1)

The pre-sentence diagnosis and report shall be made by personnel assigned to the court[~~-, intake service center~~] or other agency designated by the court and shall include:

- (a) An analysis of the circumstances attending the commission of the crime;
- (b) The defendant’s history of delinquency or criminality, physical and mental condition, family situation and background, economic status and capacity to make restitution or to make reparation to the victim or victims of the defendant’s crimes for loss or damage caused thereby, education, occupation, and personal habits;
- (c) Information made available by the victim or other source concerning the effect that the crime committed by the defendant has had upon said victim, including but not limited to, any physical or psychological harm or financial loss suffered;
- (d) Information concerning defendant’s compliance or non-compliance with any order issued under section 806-11; and
- (e) Any other matters that the reporting person or agency deems relevant or the court directs to be included.

(2) The court personnel[~~-, service center~~¹] or agency shall give notice of the crime victim compensation act, the application for compensation procedure, and the possibility of restitution by the defendant to all victims of the convicted defendant’s criminal acts.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved April 23, 2012.)

Note

1. Prior to amendment a comma appeared here.

A Bill for an Act Relating to Collection Agencies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 443B-3.5, Hawaii Revised Statutes, is amended to read as follows:

“[§443B-3.5]—Exempt] Designation as exempt out-of-state collection agency[-]; limitations on business practices; fees; disciplinary action. (a) A collection agency ~~[licensed or registered as a collection agency in another state,] that is not registered as a collection agency in the State~~ may apply for designation as an exempt out-of-state collection agency ~~[and conduct business in this State pursuant to this section. A collection agency granted designation as an exempt out-of-state collection agency shall be exempt from registration and other regulatory requirements under this chapter except as provided in]~~ by complying with the requirements of this section.

(b) ~~[A collection agency may apply for designation as an exempt out-of-state collection agency; provided that the collection agency:~~

(1) ~~Is licensed or registered as a collection agency under the laws of a state that:~~

(A) ~~Regulates collection agencies; and~~

(B) ~~Does not require a Hawaii collection agency to obtain a license or register to collect debts in that state if the activities of the Hawaii collection agency are limited to those described in paragraphs (2), (3), and (4);~~

(2) ~~Is collecting debts on behalf of an out-of-state creditor;~~

(3) ~~Does not solicit or engage in collection activities for clients in this State; and~~

(4) ~~Only collects debts in this State using interstate communication methods, including telephone, facsimile, or mail.] To be designated~~

as an exempt out-of-state collection agency, a collection agency shall:

(1) Not have any employees or agents located in the State who engage in the collection of debts for another person;

(2) Not have any business location or office in the State that engages in collection agency activities;

(3) Hold a current, unrestricted, and unconditional license, permit, or registration as a collection agency in the reciprocal state identified in its application;

(4) Limit its collection activity in the State to the collection of debts from residents of the State on behalf of out-of-state clients through interstate communication by telephone, mail, facsimile, or electronic mail; and

(5) Not collect debts on behalf of creditors who have a business presence in the State.

For purposes of this section, a creditor has a “business presence” in the State if either the creditor or an affiliate or subsidiary of the creditor has an office in the State.

(c) An applicant for designation as an exempt out-of-state collection agency shall submit the following:

(1) An application for designation as an exempt out-of-state collection agency ~~[exemption]~~ as prescribed by the director;

- (2) ~~[Verification that:~~
 - (A) ~~The collection agency holds]~~ Documentation that verifies the out-of-state collection agency:
 - (A) Holds a current, unrestricted, and unconditional license, permit, or registration [to conduct business] as a collection agency in [another] a reciprocal state; and
 - (B) Is in good standing with and has complied with the laws of [that] the reciprocal state, including the maintenance of a bond[, if required, and] in the amount required by the reciprocal state; [and
 - (C) The collection agency's state of licensure does not require Hawaii collection agencies to register or become licensed in that state before collecting debts in that state;]
 - (3) An agreement in writing to comply with the requirements of [sections 443B-9, 443B-15, 443B-16, 443B-17, 443B-18, and 443B-19; and] all laws of the State that regulate collection practices, including but not limited to the requirements of chapter 480D and this chapter, other than registration and bonding as specified in subsection (e); and
 - (4) Payment of the following nonrefundable fees:
 - (A) With the application, an application fee of \$25; and
 - (B) Upon approval of an out-of-state collection agency exemption, the compliance resolution fund fee for collection agencies.
 - (d) ~~[An]~~ A designated exempt out-of-state collection agency may [renew] apply for renewal of the exemption biennially by June 30 of each even-numbered year [pursuant to subsection (e)].
 - (e) An out-of-state collection agency shall not collect or attempt to collect any money or any other form of indebtedness alleged to be due and owing from any person who resides or does business in this State without first registering under this chapter or receiving an exemption pursuant to this section.
 - (f) An exempt out-of-state collection agency shall be subject to sections 443B-9, 443B-15, 443B-16, 443B-17, 443B-18, and 443B-19, and all remedies provided by this chapter and by any other law].
 - (e) A collection agency that is designated as an exempt out-of-state collection agency shall be exempt from the registration requirements of this chapter and bonding requirements of section 443B-5; provided that this section shall not exempt a collection agency from the requirements of other laws that regulate collection practices in the State, including but not limited to the requirements of chapter 480D and this chapter.
 - (f) A designated exempt out-of-state collection agency shall not:
 - (1) Engage in collection activities in the State, except for the collection of claims from residents of this State on behalf of out-of-state clients through interstate communication by telephone, mail, facsimile, or electronic mail, as specified in this chapter;
 - (2) Advertise or solicit, either in print, by letter, in person, or otherwise, the right to collect or receive payment for another of any debt from creditors who have a business presence in the State;
 - (3) Collect debts on behalf of a creditor who has a business presence in the State;
 - (4) Collect debts in the State unless it maintains a current, unrestricted, and unconditional license, permit, or registration as a collection agency in the reciprocal state identified in its application;
 - (5) Bring or maintain any action involving the collection of debts of its clients in any court of the State;

- (6) Communicate with debtors in the State other than by interstate communication by telephone, mail, facsimile, or electronic mail;
- (7) Provide false or misleading information at the time of initial or renewal application or during the period of exemption;
- (8) Have any employees or agents located in the State who engage in the collection of debts for another person;
- (9) Have any business location or office in the State that engages in collection agency activities; or
- (10) Violate any of the provisions of this chapter.

(g) A collection agency shall not collect or attempt to collect any money or any other form of indebtedness alleged to be due and owing from any person who resides or does business in the State without first registering under this chapter, or being designated as an exempt out-of-state collection agency pursuant to this section.

(h) A designated exempt out-of-state collection agency shall notify the director in writing of any judgment, award, disciplinary action, consent decree, or order issued against it in any jurisdiction within thirty days of the entry of the judgment, award, disciplinary action, consent decree, or order.

(i) The failure of a designated exempt out-of-state collection agency to maintain a current, unrestricted, and unconditional license, permit, or registration in the reciprocal state identified in its application shall cause the automatic forfeiture of the exemption effective as of the date on which the designated exempt out-of-state collection agency's license, permit, or registration is no longer current, unrestricted, or unconditional in the reciprocal state identified in its application. Any collection activity by the designated exempt out-of-state collection agency after the forfeiture date shall be deemed to be unlicensed activity. An out-of-state collection agency whose exemption is forfeited shall apply as a new applicant for an exemption in order to resume business in the State.

(j) The remedies or penalties provided by this section are cumulative to the remedies or penalties available under this chapter and all other laws of the State.

(k) Any collection activity by a designated exempt out-of-state collection agency, other than activity authorized by this section, shall be deemed to be unlicensed activity.

(l) The director may deny or refuse to renew an out-of-state collection agency's initial or renewal application for exemption for failure to comply with this section, or for the grounds set forth in sections 443B-4.57 or 436B-19.

(m) In order to effectuate this section and enforce the requirements of this chapter as it relates to designated exempt out-of-state collection agencies, the director is expressly authorized to initiate any action on behalf of the State as may be appropriate in any state or federal court of competent jurisdiction.

(n) For purposes of this section, a "reciprocal state" is one:

(1) Whose requirements to be licensed, permitted, or registered as a collection agency in that state are at a minimum substantially equivalent to the requirements to be registered as a collection agency in this State, including but not limited to the bonding requirements in section 443B-5; and

(2) That does not require a Hawaii collection agency to obtain a license, permit, or registration to collect debts in that state if the activities of the Hawaii collection agency are limited to collecting debts on behalf of an out-of-state creditor using interstate communication methods, including telephone, facsimile, mail, or electronic mail, and the Hawaii collection agency does not solicit or engage in collection activities for clients in that state."

SECTION 2. Section 443B-14, Hawaii Revised Statutes, is amended to read as follows:

~~“[§443B-14] Penalties. [(a) Violation of this chapter by an individual is punishable by a fine of not more than \$500.~~

~~(b) Violation]~~ Any violation of this chapter ~~[by persons other than an individual]~~ is punishable by a fine of not more than ~~[\$1,000.]~~ \$5,000 per violation. Any officer, agent, or employee of a collection agency who personally participates in any violation of this chapter by the collection agency ~~[is]~~ shall be subject to penalties prescribed in ~~[subsection (a) of]~~ this section.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved April 23, 2012.)

ACT 53

H.B. NO. 2023

A Bill for an Act Relating to the Center for Nursing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 198, Session Laws of Hawaii 2003, section 10, as amended by section 2 of Act 173, Session Laws of Hawaii 2008, is amended to read as follows:

~~“SECTION 10. This Act shall take effect on July 1, 2003; provided that the amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted pursuant to Act 142, Session Laws of Hawaii 1998; and provided further that sections 3 and 6 shall be repealed on July 1, 2014.”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2012.)

ACT 54

S.B. NO. 2759

A Bill for an Act Relating to Securities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 485A-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following transactions are exempt from the requirements of sections 485A-301 to 485A-305 and 485A-504:

- (1) An isolated nonissuer transaction, whether or not effected by or through a broker-dealer;
- (2) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction:
 - (A) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
 - (B) The security is sold at a price reasonably related to its current market price;
 - (C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;
 - (D) A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available and contains:
 - (i) A description of the business and operations of the issuer;
 - (ii) The names of the issuer’s executive officers and the names of the issuer’s directors, if any;
 - (iii) An audited balance sheet of the issuer as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
 - (iv) An audited income statement for each of the issuer’s two immediate previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and
 - (E) Any one of the following requirements is met:
 - (i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers’ Automated Quotation System;
 - (ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
 - (iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or

- (iv) The issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;
- (3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;
- (4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));
- (5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:
 - (A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or
 - (B) Has a fixed maturity or a fixed interest or dividend, if:
 - (i) A default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and
 - (ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
- (6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;
- (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;
- (8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000, acting in the exercise of discretionary authority in a signed record for the account of others;
- (9) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (10) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:
 - (A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

- (B) A general solicitation or general advertisement of the transaction is not made; and
- (C) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;
- (11) A transaction by an executor, administrator of an estate, personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (12) A sale or offer to sell to:
 - (A) An institutional investor;
 - (B) A federal covered investment adviser; or
 - (C) Any other person exempted by rule adopted or order issued under this chapter;
- (13) Any transaction pursuant to a sale or an offer to sell securities of an issuer, if the transaction is part of an issue in which:
 - (A) There are no more than twenty-five purchasers (other than those designated in paragraph (12)), wherever located, during any twelve consecutive months;
 - (B) The issuer reasonably believes that all purchasers (other than those designated in paragraph (12)), wherever located, are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. The purchase shall be presumed to be made with a view to distribute and not to invest if any resale of a security sold in reliance on this exemption is within twelve months of sale, except a resale pursuant to a registration statement effective under section 485A-301, or to an accredited investor pursuant to an exemption available under this chapter;
 - (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a broker-dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and
 - (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;
- (14) A transaction under an offer to existing security holders of the issuer, including persons who at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this State;
- (15) (A) A transaction involving the offer or sale of a security by an issuer to an accredited investor that meets the following requirements:
 - (i) The issuer reasonably believes that the sale is to persons who are accredited investors;
 - (ii) The issuer is not in the development stage, without specific business plan or purpose;
 - (iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and
 - (iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view

to, or for sales in connection with, a distribution of the security. The purchase shall be presumed to be made with a view to distribute and not to invest if any resale of a security sold in reliance on this exemption is within twelve months of sale, except a resale pursuant to a registration statement effective under section 485A-301, or to an accredited investor pursuant to an exemption available under this chapter;

- (B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:
 - (i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the Securities and Exchange Commission;
 - (ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
 - (iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - (iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;
- (C) Subparagraph (B) shall not apply if:
 - (i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
 - (iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph; and
- (D) An issuer claiming the exemption under this paragraph, ~~[with-in]~~ no later than fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the offering circular or similar document provided to the accredited investor and a \$200 filing fee.

For the purposes of this paragraph, "accredited investor" shall have the same meaning as provided in Rule 501(a) adopted under the Securities Act of 1933 (17 C.F.R. 230.501(a));

- (16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:
 - (A) A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and
 - (B) A stop order of which the offeror is aware has not been issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;
- (17) An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:
 - (A) A registration statement has been filed under this chapter, but is not effective;
 - (B) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this chapter; and
 - (C) A stop order of which the offeror is aware has not been issued by the commissioner under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;
- (18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;
- (19) A rescission offer, sale, or purchase under section 485A-510;
- (20) An offer or sale of a security to a person not a resident of this State and not present in this State if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;
- (21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, including offers or sales of such securities to:
 - (A) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;
 - (B) Family members who acquire the securities from those persons through gifts or domestic relations orders;
 - (C) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and
 - (D) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive

- more than fifty per cent of their annual income from those organizations;
- (22) A transaction involving:
 - (A) A stock dividend or equivalent equity distribution, whether or not the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;
 - (B) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or
 - (C) The solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162);
 - (23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in accordance with chapter 91, the commissioner, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors;
 - (24) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of this State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of this State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation; provided that the issuer of the security shall apply for the exemption to the commissioner on such form and containing such information as the commissioner may prescribe. If the commissioner finds that the business applicant's proposed plan and the proposed issuance of securities are fair, just, and equitable, that the applicant intends to transact its business fairly and honestly, and that the securities that the applicant proposes to issue and the method to be used by the applicant in issuing or disposing of the securities will not, in the opinion of the commissioner, work a fraud upon the purchaser thereof,

the commissioner shall issue to the applicant a permit authorizing the applicant to issue and dispose of the securities in this State in the manner provided herein and in such amounts and for such consideration as the commissioner may provide in the permit. Otherwise, the commissioner shall deny the application and refuse the permit and notify the applicant of the decision in writing, subject to appeal as provided in section 485A-609. In any permit issued under this paragraph, the commissioner may require the deposit in escrow or impoundment of any or all securities, the proceeds from the sale thereof, approval of advertising material, and any of the conditions as set forth in section 485A-304(f). The commissioner may act as escrow holder for securities required to be deposited in escrow by the commissioner's order or as a necessary signatory on any account in which impounded proceeds from the sale of escrowed securities are deposited;

- (25) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of this State of an apartment or unit in a condominium project, and a rental management contract relating to the apartment or unit, including an interest in a partnership formed for the purpose of managing the rental of apartments or units if the rental management contract or the interest in the partnership is offered at the same time as the apartment or unit is offered.

For the purposes of this paragraph, the terms "apartment", "unit", "condominium", and "project" shall have the meanings prescribed in section 514A-3 or 514B-3; and

- (26) Any transaction not involving a public offering within the meaning of section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d), but not including any transaction specified in the rules and regulations thereunder."

SECTION 2. Section 485A-402, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The following individuals are exempt from the registration requirement of subsection (a):

- (1) An individual who represents a broker-dealer in effecting transactions in this State limited to those described in section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78(o)(2));
- (2) An individual who represents a broker-dealer that is exempt under section 485A-401(b) or 485A-401(d);
- (3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent company or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;
- (4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 485A-202, other than section ~~[[485A-202(a)(11) and (14)]]~~ 485A-202(a)(10) and (13);
- (5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer; provided that an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual

is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

- (6) An individual who represents a broker-dealer registered in this State under section 485A-401(a) or exempt from registration under section 485A-401(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;
- (7) An individual who represents an issuer in connection with the purchase of the issuer's own securities;
- (8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or
- (9) Any other individual exempted by rule adopted or order issued under this chapter."

SECTION 3. Section 485A-501, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) To employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to fail to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person;
- (4) To issue, circulate, or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet, or other literature (in this chapter collectively referred to as "advertising matter"), which contains an untrue statement [or] of a material fact or fails to state a material fact necessary to make the statements therein made, in light of the circumstances under which they are made, not misleading;
- (5) To issue, circulate, or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating, publishing, or making the same and the fact that the person is issuing, circulating, or making the same shall be clearly indicated thereon;
- (6) To make any statement or representation or issue, circulate, or publish any advertising matter containing any statement, to the effect that the security has been in any way approved or endorsed by the commissioner; or
- (7) To issue, circulate, or publish any advertising matter unless a copy thereof has been previously filed with the office of the commissioner, or unless the commissioner has by rule adopted or order issued under this chapter exempted the filing of any advertising material."

SECTION 4. Section 485A-502, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding subsection (b)(1), an investment adviser may enter into, extend, or renew an investment advisory contract that:

- (1) Provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date; or

- (2) Provides for compensation to the investment adviser on the basis of a share of capital gains or capital appreciation of the funds of the client; provided that the conditions and requirements as defined and set forth in Rule 205-3 under the Investment [Company] Advisers Act of 1940 (17 C.F.R. 275.205-3) shall be met; and provided further that before entering into the advisory contract, and in addition to the requirements of Form ADV, the investment adviser shall disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:
- (A) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance-based fee;
 - (B) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;
 - (C) The periods that will be used to measure investment performance throughout the contract and their significance in the computation of the fee;
 - (D) The nature of any index that will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and
 - (E) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (17 C.F.R. 270.2a-4(a)(1)), how the securities will be valued and the extent to which the valuation will be independently determined."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 23, 2012.)

ACT 55

S.B. NO. 2752

A Bill for an Act Relating to Electric Utilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that electricity generation projects in Hawaii requiring external financing must typically enter into one or more long-term power purchase agreements with an electric utility before investors will provide such financing. For financial rating agencies that observe and evaluate the effect of these power purchase agreements, including Standard & Poor's, such contracts create fixed debt-like financial obligations for the electric utility that represent substitutes for debt-financed capital investments in generation capacity. To properly take into account the fixed obligations in a way that reflects the credit exposure that is added by the power purchase agreements, the financial

rating agencies represent, or impute, the impact of a power purchase agreement to the contracting electric utility's balance sheet in the form of a new debt obligation. This new obligation is typically referred to as imputed debt or debt equivalence.

Rating agencies may impute to a utility's debt level an amount up to fifty per cent or more of the existing payments on a power purchase agreement, resulting in significant amounts of imputed debt hampering a contracting utility's debt rating and impeding that utility's debt financing. Compensating factors, including legislative provisions for the mitigation of imputed debt on utility companies' balance sheets, are noted as being important variables in either raising or lowering debt equivalence levels. Without an available offsetting mechanism, imputed debt obligations on electric utilities for electricity generation projects can ultimately have a major chilling effect on energy development, especially in states pursuing ambitious renewable energy goals.

Reducing the imputed debt obligations of electric utilities can benefit electric utility customers by maximizing the utilities' ability to negotiate low cost, fixed price renewable energy contracts. In addition, the elimination of power purchase agreement-created imputed debt obligations of a utility can lower capital costs for that utility, which helps to mitigate energy costs for consumers through lower rates.

The purpose of this Act is to authorize the public utilities commission to allow electric utilities operating within the State to recover all power purchase costs.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§269- Power purchase agreements; cost recovery for electric utilities.

All power purchase costs, including costs related to capacity, operations and maintenance, and other costs that are incurred by an electric utility company, arising out of power purchase agreements that have been approved by the public utilities commission and are binding obligations on the electric utility company, shall be allowed to be recovered by the utility from the customer base of the electric utility company through one or more adjustable surcharges, which shall be established by the public utilities commission. The costs shall be allowed to be recovered if incurred as a result of such agreements unless, after review by the public utilities commission, any such costs are determined by the commission to have been incurred in bad faith, out of waste, out of an abuse of discretion, or in violation of law. For purposes of this section, an “electric utility company” means a public utility as defined under section 269-1, for the production, conveyance, transmission, delivery, or furnishing of electric power.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved April 23, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Accreted Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

“§171-2 Definition of public lands. “Public lands” means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including ~~[accreted]~~ lands accreted after May 20, 2003, and not otherwise awarded, submerged lands, and lands beneath tidal waters ~~[which] that~~ are suitable for reclamation, together with reclaimed lands ~~[which] that~~ have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (9) Lands ~~[which] that~~ are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
- (10) Lands ~~[which] that~~ are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title; and
- (11) Lands to which the high technology development corporation in its corporate capacity holds title.”

SECTION 2. Section 501-33, Hawaii Revised Statutes, is amended to read as follows:

“§501-33 Accretion to land. An applicant for registration of land by accretion shall prove by a preponderance of the evidence that the accretion is natural and permanent[;] and that the land accreted before or on May 20, 2003; provided that ~~[no applicant other than the]~~:

- (1) The State [shall] may register land accreted along the ocean[; except that a] after May 20, 2003; and
- (2) A private property owner whose eroded land has been restored by accretion after May 20, 2003, may file an accretion claim to regain title to the restored portion.

The applicant shall supply the office of environmental quality control with notice of the application, for publication in the office’s periodic bulletin in compliance with section 343-3(c)(4). The application shall not be approved unless the office of environmental quality control has published notice in the office’s periodic bulletin.

As used in this section, “permanent” means that the accretion has been in existence for at least twenty years. The accreted portion of the land ~~[shall be state land except as otherwise provided in this section and]~~ shall be considered within the conservation district. Land accreted after May 20, 2003, shall be public land except as otherwise provided in this section. Prohibited uses are governed by section 183-45.”

SECTION 3. Section 669-1, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Action may be brought by any person to quiet title to land by accretion; provided that no action shall be brought by any person other than the State to quiet title to land accreted along the ocean[;] after May 20, 2003, except that a private property owner whose eroded land has been restored by accretion may also bring such an action for the restored portion. The person bringing the action shall prove by a preponderance of the evidence that the accretion is natural and permanent[;] and that the land accreted before or on May 20, 2003. The person bringing the action shall supply the office of environmental quality control with notice of the action for publication in the office’s periodic bulletin in compliance with section 343-3(c)(4). The quiet title action shall not be decided by the court unless the office of environmental quality control has properly published notice of the action in the office’s periodic bulletin.

As used in this section, “permanent” means that the accretion has been in existence for at least twenty years. The accreted portion of land ~~[shall be state land except as otherwise provided in this section and]~~ shall be considered within the conservation district. Land accreted after May 20, 2003, shall be public land except as otherwise provided in this section. Prohibited uses are governed by section 183-45.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 23, 2012.)

A Bill for an Act Relating to Grounded Vessels.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 200-47.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Solely for the purposes of removal and with no liability to the department, the department may assume control of any vessel that:

- (1) Is grounded on a coral reef or in imminent danger of breaking up; and
- (2) Cannot be immediately removed by the owner within [seventy-two] twenty-four hours of actual notification to the vessel owner or the owner’s representative by the department and in a manner that is reasonably safe, as determined by the department. If the department has made good faith efforts to provide actual notice to the owner or the owner’s representative but such actual notice is futile, the department may assume control of the grounded vessel within twenty-four hours from the time it has been determined actual notice is futile. If the owner’s representative has received actual notice from the department and has commenced effective salvage operations, this section shall not apply.

The owner of the vessel may continue as the primary agent in salvaging the vessel after twenty-four hours upon providing proof of a marine insurance policy listing the State as an additional insured in the amount of at least \$1,000,000 and proof that the owner is actively and effectively initiating a salvage effort with reasonable evidence, as determined by the department, that the vessel may be saved within seventy-two hours of grounding; provided that the department may allow an extension beyond the seventy-two hour limit if it determines that no additional environmental damage exists. Once the department assumes control over the vessel, the vessel shall be removed by conventional salvage methods to minimize damage to the natural resources and not become a hazard to navigation. All costs and expenses of removing the vessel and damage to state or private property shall be the sole responsibility of the vessel’s owner or operator. This section shall apply whether the vessel is attended or deemed derelict under section 200-48.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 2012.)

A Bill for an Act Relating to Business Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 414-51, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A corporation may apply to the department director for authorization to use a name that, based upon the department director’s records, is substantially identical~~[-based upon the department director’s records]~~ to one or more of the names described in subsection (b). The department director shall authorize use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents in writing to the use ~~[in writing]~~ and registration of the name, and one or more words are added by the applicant to make the name distinguishable from the name ~~[of the applying corporation;]~~ on record; or
- (2) The applicant delivers to the department director a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this State.”

SECTION 2. Section 414-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation administratively dissolved under section 414-402 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 3. Section 414D-14, Hawaii Revised Statutes, is amended by amending the definition of “approved by the members” or “approval by the members” to read as follows:

““Approved by the members” or “approval by the members” means an act approved or ratified by:

- (1) The affirmative vote of a majority of the votes represented and cast at a duly held meeting at which a quorum is present; provided that the affirmative votes cast constitute a majority of the required quorum;
- (2) A ballot or written consent in conformity with this chapter; or
- (3) The affirmative vote, ballot, or written consent of the greater proportion, including the votes of all the members of any class, unit, or grouping as may be provided in the articles, bylaws, or this chapter for any specified member action.”

SECTION 4. Section 414D-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A corporation may apply to the department director for authorization to use a name that, based upon the department director’s records, is substantially identical to one or more of the names described in subsection (b). The department director shall authorize the use of the name applied for if:

- (1) The other entity or holder of a reserved or registered name consents in writing to the use ~~[in writing]~~ and registration of the name, and one or more words are added by the applicant to make the name

- distinguishable ~~[upon the records of the department director]~~ from the name ~~[of the applying corporation]~~ on record; or
- (2) The applicant delivers to the department director a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State."

SECTION 5. Section 414D-71, Hawaii Revised Statutes, is amended to read as follows:

"§414D-71 Registered ~~[office and registered]~~ agent. Each corporation shall continuously maintain in this State~~[-]~~ a registered agent, who shall have a business address in this State and shall be:

- (1) ~~[A registered office that may be the same as any of its places of business; and]~~ An individual who resides in this State;
- (2) ~~[A registered agent, who may be:~~
 - (A) ~~An individual who resides in this State and whose business office is identical with the registered office;~~
 - (B) ~~A domestic entity authorized to transact business in this State whose business office is identical with the registered office; or~~
 - (C) ~~A foreign entity authorized to transact business in this State whose business office is identical with the registered office.]~~ A domestic entity authorized to transact business or conduct affairs in this State; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State."

SECTION 6. Section 414D-72, Hawaii Revised Statutes, is amended to read as follows:

"§414D-72 Designation or change of ~~[registered office or]~~ registered agent. (a) A corporation that does not already have a registered ~~[office and registered]~~ agent shall designate its registered ~~[office and registered]~~ agent by ~~[delivering to the department director for filing a statement of designation that sets forth:~~

- (1) ~~The name of the corporation;~~
- (2) ~~The street address of its initial registered office in this State and the name of its initial registered agent at its initial registered office; and~~
- (3) ~~That the street addresses of its registered office and agent shall be identical.]~~ complying with section 425R-4.

(b) A corporation may change ~~[its registered office or]~~ its registered agent by ~~[delivering to the department director for filing a statement of change that sets forth:~~

- (1) ~~The name of the corporation;~~
- (2) ~~The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and~~
- (3) ~~That after the change or changes are made, the street addresses of its registered office and agent shall be identical.]~~ complying with section 425R-7.

(c) ~~[If the registered agent's street address changes, the corporation's registered agent may change the street address of the corporation's registered office by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a~~

statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.] If the registered agent changes its name, address, or type or jurisdiction of organization, the agent shall comply with the requirements of section 425R-8 or 425R-9, whichever is applicable.”

SECTION 7. Section 414D-73, Hawaii Revised Statutes, is amended to read as follows:

“[H§414D-73] Resignation of registered agent. [(a)] A registered agent may resign ~~[as registered agent by signing and delivering to the department director for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.~~

~~(b) A registered agent shall mail one copy to the registered office (if not discontinued) and a second copy to the corporation at its principal office.~~

~~(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement is filed.] from the registered agent’s appointment by complying with the requirements of section 425R-10.”~~

SECTION 8. Chapter¹ 414D-104.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise ~~[provided]~~ restricted by the articles of incorporation or bylaws of a corporation, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a ballot to every member entitled to vote on the matter. The corporation may deliver ballots by electronic transmission.”

SECTION 9. Section 414D-182, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Amendments to the articles of incorporation shall be made in the following manner:

- (1) If any members are entitled to vote on an amendment, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at an annual, regular, or special meeting of the members. Notice setting forth the proposed amendment or a summary of the changes to be effected by the proposed amendments shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings to members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes that members present at the meeting or represented by proxy are entitled to cast; and
- (2) If there are no members or no members entitled to vote on an amendment, an amendment shall be adopted at a meeting of the board of directors upon its receiving the vote of a majority of the directors in office.”

SECTION 10. Section 414D-250, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation administratively dissolved under section 414D-249 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;

- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation."

SECTION 11. Section 415A-8, Hawaii Revised Statutes, is amended to read as follows:

"§415A-8 Corporate name. The name of a professional corporation:

- (1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule of the licensing authority of the profession; and
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the applicant files with the director either of the following:
 - (A) The written consent from the entity or holder of a reserved or registered name to use and register the same or substantially identical name, and one or more words are added by the applicant to make the name distinguishable from the ~~[other]~~ name[s] on record; or
 - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 12. Section 415A-14.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 415A-8;
- (2) The profession or professions that the corporation shall be authorized to practice and any other purpose allowed by the licensing laws and rules of this State;
- (3) The mailing address of ~~[its initial principal office, the street address of its initial registered office, and the name of its initial registered agent at its initial registered office;]~~ the corporation's initial principal office and the information required by section 425R-4(a);
- (4) The number of directors constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified;
- (5) The name, title, and address of each officer; and
- (6) The number of shares the corporation is authorized to issue, and if the shares are to be divided into classes, the number of shares of each class."

SECTION 13. Section 425-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No statement or certificate of any partnership shall be recorded by the director unless the name is not the same as, or substantially identical to the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the partnership files with the director any one of the following:

- (1) The written consent from the entity or holder of a reserved or registered name to use and register the same or substantially identical name, and one or more words are added by the partnership to make the name distinguishable from the ~~[other]~~ name~~s~~ on record; or
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the partnership to the use of the name in this State.”

SECTION 14. Section 425-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within two years after the administrative cancellation of a domestic general partnership under this section, the registration statement of the domestic general partnership may be reinstated by the director upon written application executed by any partner of the domestic general partnership. The application shall:

- (1) Recite the name of the domestic general partnership and the effective date of its administrative cancellation;
- (2) Contain all statements due and unfilled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the domestic general partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 15. Section 425-164, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A partnership whose statement of qualification has been administratively revoked may apply to the director for reinstatement within two years after the effective date of the revocation. The application shall:

- (1) Recite the name of the partnership and the effective date of the revocation;
- (2) Contain all reports due and unfilled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 16. Section 425E-108, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Unless authorized by subsection (e), the name of a domestic limited partnership or limited liability limited partnership or foreign limited partnership or limited liability limited partnership as set forth in the certificate of limited partnership or certificate of authority shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability partnership, limited partnership, limited liability limited partnership, or limited liability company existing or registered under the laws of this State, any foreign corporation, partnership, limited liability partnership, limited partnership, limited liability limited partnership, or ~~[foreign]~~ limited liability company authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter; except that this provision shall not apply if the applicant filed with the director either of the following:

- (1) The written consent of the other ~~[partnership]~~ entity or holder of a reserved or registered name to use and register the same or substantially identical name, and one or more words are added by the applicant to make the name distinguishable from the ~~[other]~~ name[:] on record; or
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.”

SECTION 17. Section 425E-211, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, \$50;
- (2) Any certificate of amendment, restatement, or correction, \$10;
- (3) Statement of termination, \$10;
- (4) Annual statement for domestic or foreign limited partnership, \$10;
- (5) Any other certificate or document of domestic or foreign limited partnership, \$10;
- (6) Application for certificate of authority, \$100;
- (7) ~~[Any certificate of amendment or agent change for foreign limited partnership, \$10;]~~ Application for certificate of withdrawal of foreign limited partnership, \$10;
- (8) ~~[Application for certificate of withdrawal of foreign limited partnership, \$10;]~~ For filings relating to registered agents, the fees established by section 425R-2;
- (9) Reservation of name, \$10;
- (10) Transfer of reservation of name, \$10;
- (11) Good standing certificate, \$5;
- (12) Articles of conversion or merger, \$100;
- (13) Special handling fee for review of articles of conversion or merger, \$75;
- (14) Special handling fee for review of any limited partnership document, \$25;
- (15) Special handling fee for certificates issued by the director, \$10 per certificate; and
- (16) Special handling fee for certification of documents, \$10~~]; and~~
- (17) ~~Agent's statement of change of address, \$10 for each affected domestic or foreign limited partnership; provided that if more than~~

~~two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic or foreign limited partnership].”~~

SECTION 18. Section 425E-810, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A limited partnership that has been administratively canceled may apply to the director for reinstatement within two years after the effective date of cancellation. The application shall:

- (1) Recite the name of the limited partnership and the effective date of its administrative cancellation;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the limited partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 19. Section 428-105, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A limited liability company may apply to the director for authorization to use a name that, upon the records of the department, is the same as, or is substantially identical to, one or more of the names described in subsection (b). The director may authorize use of a substantially identical name applied for if:

- (1) The present user, registrant, or owner of a reserved or registered name consents in writing to the use and registration of the name, and one or more words are added by the applicant to make the name distinguishable ~~[upon the records of the director from the name applied for;]~~ from the name on record; or
- (2) The applicant delivers to the director a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this State.”

SECTION 20. Section 428-205, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided in this chapter, a record to be filed by or on behalf of a limited liability company in the office of the director shall be certified and signed by a:

- (1) Manager of a manager-managed company[;] or, in the case of a foreign limited liability company, a person who is authorized or required to sign a record under the laws of its jurisdiction of organization;
- (2) Member of a member-managed company[;] or, in the case of a foreign limited liability company, a person who is authorized or required to sign a record under the laws of its jurisdiction of organization;
- (3) Person organizing the company, if the company has not been formed; or
- (4) Fiduciary, if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary.”

SECTION 21. Section 428-811, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A limited liability company administratively terminated under section 428-810 may apply to the director for reinstatement within two years after the effective date of termination. The application shall:

- (1) Recite the name of the limited liability company and the effective date of its administrative termination;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the director of taxation reciting that all taxes owed by the company have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation."

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 23. This Act shall take effect on July 1, 2012.

(Approved April 24, 2012.)

Note

1. So in original.

ACT 59

H.B. NO. 1772

A Bill for an Act Relating to Violation of Privacy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 711-1111, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of violation of privacy in the second degree if, except in the execution of a public duty or as authorized by law, the person intentionally:

- (a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place;
- (b) Peers or peeps into a window or other opening of a dwelling or other structure adapted for sojourn or overnight accommodations for the purpose of spying on the occupant thereof or invading the privacy of another person with a lewd or unlawful purpose, under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed;
- (c) Trespasses on property for the sexual gratification of the actor;
- (d) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place, including other than another person in a stage of undress or sexual activity;
- (e) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein;
- (f) Covertly records or broadcasts an image of another person's intimate area underneath clothing, by use of any device, and that image is taken while that person is in a public place and without that person's consent;
- (g) Intercepts, without the consent of the sender or receiver, a message or photographic image by telephone, telegraph, letter, electronic

transmission, or other means of communicating privately; but this paragraph does not apply to:

- (i) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or
- (ii) Interception by the telephone company, electronic mail account provider, or telephone or electronic mail subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use;
- (h) Divulges, without the consent of the sender or the receiver, the existence or contents of any message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately, if the accused knows that the message or photographic image was unlawfully intercepted or if the accused learned of the message or photographic image in the course of employment with an agency engaged in transmitting it; or
- (i) Knowingly possesses materials created under circumstances prohibited in section 711-1110.9."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved April 24, 2012.)

ACT 60

S.B. NO. 2803

A Bill for an Act Relating to Contract Proposals for Child Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103F-401.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No contract proposals shall be accepted from any applicant who lacks any license necessary to conduct the business being sought by the request for proposals[~~], with the exception of proposals from applicants to operate a child care program required to be licensed pursuant to section 346-161.~~]"

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 2012.)

A Bill for an Act Relating to the Hawaii State Public Library System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 51, Session Laws of Hawaii 2004, was to in part transfer the control of certain functions of executive branch agencies that pertained to education personnel and facilities to the department of education to increase operational efficiency of the department while reducing bureaucracy. However, after enactment of Act 51, the department of human resources development continued to provide services to all employees of the Hawaii state public library system and the Hawaii state public library system employees were not a part of or included in the department of education personnel system.

This Act clarifies the intent of Act 51 by amending section 46 of Act 51, Session Laws of Hawaii 2004, to confirm that all personnel in the Hawaii state public library system are within the personnel system administered by the department of human resources development, and are not part of the personnel system administered by the department of education. This Act reaffirms the human resources functions currently performed by the department of human resources development for the Hawaii state public library system. These human resources functions include, but are not limited to: payroll, records, transactions, leave, reports, recruitment, certification, examination, management, classification, and labor relations. Although the department of education and the Hawaii state public library system are controlled and overseen by the board of education, Act 51 was silent regarding all employees of the Hawaii state public library system. The human resources functions of the Hawaii state public library system are best served by the personnel system administered by the department of human resources development, rather than the department of education. In addition, the department of accounting and general services continues to be the expending agency for the Hawaii public library system's capital improvement funds and continues to perform repair and maintenance for the Hawaii public library system.

SECTION 2. Act 51, Session Laws of Hawaii 2004, is amended by amending section 46 to read as follows:

"SECTION 46. (a) All the rights, powers, functions, duties, and resources of:

- (1) The department of accounting and general services relating to capital improvement programs, including the:
 - (A) Expending of capital improvement funds for the acquisition and development of land, the design and construction of new facilities, and the making of renovations or additions to existing facilities, including moneys in the state educational facilities improvement special fund; and
 - (B) Buying, purchasing, renting, leasing, or otherwise acquiring of any good, service, or construction, including the description of requirements, selection and solicitation of sources, preparation and awarding of contracts, payment of vendors, and all other phases of contract administration;
- (2) The department of accounting and general services relating to repair and maintenance functions not transferred to the department of education under section 44 of this Act; and

- (3) The department of human resources development relating to the:
 - (A) Operation of a centralized human resources system that encompasses the classes of work performed by department of education employees, and that integrates payroll, records, transactions, leaves, and reports; and
 - (B) Recruitment, certification, examination, management, classification, and compensation of department of education employees, including labor relations;

are transferred to the department of education effective July 1, 2005, subject to repeal by subsequent legislation.

(b) All moneys budgeted in support of each position to be transferred to the department of education, including moneys for direct and indirect employee benefits, are transferred to the department of education effective July 1, 2005, subject to repeal by subsequent legislation.

(c) This section shall not apply to the Hawaii state public library system and its employees."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 24, 2012.)

ACT 62

S.B. NO. 2796

A Bill for an Act Relating to Death Benefits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 2010, the twenty-fifth legislature passed House Bill No. 2774, which was enacted as Act 205, Session Laws of Hawaii 2010 (Act 205). Part II of Act 205 amended section 346-15, Hawaii Revised Statutes, by decreasing death benefits for medical and financial assistance recipients to an amount equal to the Social Security Administration's one-time lump-sum death benefit. Act 205 has a repeal date of June 30, 2012, at which time section 346-15, Hawaii Revised Statutes, will be reenacted in the form in which it read on the day prior to the act's effective date.

In the current economic climate of decreased state revenue and the unfortunate necessity of reducing medical assistance benefits, identifying areas to decrease expenditures with minimal impact on the public becomes increasingly important. The senate committee on ways and means stated in Standing Committee Report No. 3033 (2010) that "the State's economic difficulties threaten the provision of human services under many state programs. Your Committee finds that, despite budget cuts and realignments, it is important to maintain the level of services that are provided to the neediest populations in the State."

Maintaining the death benefit amount authorized in Act 205 by repealing the sunset date for the amendments to section 346-15, Hawaii Revised Statutes, in section 9 of Act 205 will help preserve health care benefits for low-income adults and children.

Additionally, the language in Act 205 amending section 346-15, Hawaii Revised Statutes, appears to make the department of human services responsible for authorizing the disposition of unclaimed dead human bodies. Section 346-15, Hawaii Revised Statutes, should only allow the department of human services to pay for mortuary and crematory costs for unclaimed dead human bodies after

approving the determination that the dead human body is unclaimed pursuant to section 327-32, Hawaii Revised Statutes.

The purpose of this Act is to make permanent the reduced death benefit to avoid the need for further reductions to necessary health care assistance and to establish that the department is responsible for the payment of the crematory and mortuary services for unclaimed dead human bodies after approving the determination that a dead human body is unclaimed.

SECTION 2. Section 346-15, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“§346-15 Death benefits for deceased medical or financial assistance recipients and disposition of unclaimed ~~[corpses.]~~ dead human bodies.”

SECTION 3. Section 346-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All unclaimed dead human bodies shall be cremated. The department may ~~[authorize and]~~ bear the cost of the mortuary and crematory services for unclaimed ~~[corpses]~~ dead human bodies furnished by any licensed provider of mortuary or crematory services. Payments for mortuary and crematory services shall be made to the extent of the cost, or in the sum of \$800 in total, whichever is less, for each unclaimed ~~[corpse.]~~ dead human body. Individuals who have possession, charge, or control of any unclaimed dead human body to be cremated at public expense shall have sixty days from the date of the deceased’s death to submit in writing to the department its determination that the dead human body is unclaimed and its application for payment for cremation. The county medical examiners or coroners shall have no time limitation by which to submit their written determination that the dead human body is unclaimed and their application for payment for cremation.”

SECTION 4. Section 346-15, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) For the purposes of this section, “unclaimed ~~[corpse]”~~ dead human body” means the remains of any deceased person for whom no one has assumed responsibility for disposition ~~[of the body within five working days, excluding weekends, from the date of death and about whom the department, and the respective county medical examiner or coroner have no actual knowledge of a legally responsible party.]~~ and no legally responsible individual has been identified. Pursuant to section 327-32, the department shall review the written description of the efforts used in making the determination that a dead human body is unclaimed and approve the determination for purposes of payment of the mortuary and crematory services, if it meets the department’s requirements.”

SECTION 5. Act 205, Session Laws of Hawaii 2010, is amended by amending section 9 to read as follows:

“SECTION 9. This Act shall take effect on July 1, 2010; provided that on June 30, 2012, part I and part III of this Act shall be repealed and ~~[sections 346-15 and]~~ section 346-59.9, Hawaii Revised Statutes, shall be reenacted in the form in which ~~[they]~~ it read on the day prior to the effective date of this Act; and provided further that section 6 of this Act shall take effect retroactive to May 1, 2010.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on June 29, 2012.

(Approved April 24, 2012.)

ACT 63

S.B. NO. 2774

A Bill for an Act Relating to Government Publications.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 93, Hawaii Revised Statutes, establishes and describes a system for distributing state and county publications. The intent of this Act is to simplify distribution in response to changes in technology and to reduce printing, workload, and delivery costs for all agencies by reducing the number of print copies required by chapter 93, Hawaii Revised Statutes. This Act also stipulates that the state publications distribution center be notified of electronic publications by state and county agencies.

SECTION 2. Chapter 93, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§93- Notification when electronic publications posted. Every state and county agency shall immediately notify the state publications distribution center with identification and location information for each electronic publication made available on a public networked information system such as the Internet.”

SECTION 3. Section 93-2, Hawaii Revised Statutes, is amended to read as follows:

“§93-2 Definitions. [~~“Print” includes all forms of printing and duplications, except administrative forms.~~]

~~“Publication” [includes any document, compilation, journal, report, statute, regulation, ordinance issued in print by any state or county agency, and confidential publications which shall be deposited in accordance with security regulations to be determined by the issuing agency.]~~ means informational matter produced for public distribution or access in any tangible medium, originating or produced with the imprint of, by the authority of, or at the total or partial expense of any agency of the State or a county government. “Publication” does not include manuals, calendars, schedules, correspondence, or forms intended strictly for in-house use of governmental agencies, scholarly publications of the University of Hawaii press, and materials developed by the department of education specifically for instructional use with students.

“State and county agency” includes every state, city and county and county office, officer, department, board, commission, and agency, whether in the legislative, executive, or judicial branch.”

SECTION 4. Section 93-3, Hawaii Revised Statutes, is amended to read as follows:

“§93-3 Deposit of publications. ~~[Every] Upon release of a publication,~~ every state and county agency shall immediately ~~[upon release of a publication,]~~ deposit ~~[fifteen]~~ seven copies with the state publications distribution center and one copy with the University of Hawaii. Additional copies of the publications shall be deposited with the publications distribution center upon request of ~~[the state librarian]~~ a representative of that center so long as copies are available.

The state librarian may enter into depository agreements with private and public educational, historical, or scientific institutions or other libraries, within or without the State, in order to achieve the objectives sought under this part.”

SECTION 5. Section 93-11, Hawaii Revised Statutes, is amended to read as follows:

“§93-11 Disposition of statutes and court reports. In addition to the copies of ~~[Hawaiian statutes]~~ Hawaii Revised Statutes and ~~[supreme court]~~ Hawaii reports that may be disposed of by sale, exchange, or presentation to public officers for official use, ~~[not more than fifty]~~ copies of each volume may be presented to libraries of educational, historical, or scientific institutions or other libraries of a public or quasi-public nature in the State and elsewhere.”

SECTION 6. Section 93-5, Hawaii Revised Statutes, is repealed.

SECTION 7. The chief information officer, with the assistance of the office of information management and technology and the Hawaii state public library system, and in consultation with the counties, shall review the technology, personnel, training, fiscal, and other requirements necessary to implement a program through which state and county agencies would make all of their publications available in electronic format for online distribution.

The chief information officer shall submit findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2013.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect upon its approval.

(Approved April 24, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 64

H.B. NO. 1874

A Bill for an Act Relating to Vog.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 229, Session Laws of Hawaii 2011, is amended by amending subsection (d) of section 1 to read as follows:

“(d) The administrator of the civil defense agency of the county with an active volcano from which vog emanates shall be the chair of the interagency

task force on vog. The task force shall include the following members or their designees:

- (1) The director of health, or the director's designee;
- (2) The vice director of civil defense, department of defense;
- (3) The representative of the fourth representative district;
- (4) The representative of the fifth representative district;
- (5) The senator of the second senatorial district;
- (6) Hawaii county council members representing lower Puna and Kau;
- (7) The fire chief of the Hawaii county fire department;
- (8) A representative from the Hawaii district office of the department of education;
- (9) The chairperson of the east Hawaii regional board of the Hawaii health systems corporation;
- (10) The chairperson of the board of agriculture;
- (11) The chairperson of the board of land and natural resources;
- (12) The district health officer for the Hawaii district health office of the department of health;
- (13) The administrator of Kau hospital;
- (14) The executive director of the Hawaii Visitors and Convention Bureau for the island of Hawaii; ~~and~~
- (15) The Hawaii district manager of the state department of transportation highways division[;];
- (16) Any other representative from a representative district that is impacted by vog, as may be appointed by the speaker of the house of representatives at the speaker's discretion; and
- (17) Any other senator from a senatorial district that is impacted by vog, as may be appointed by the president of the senate at the president's discretion.

The members of the task force shall serve without compensation, and all necessary expenses, including travel expenses, shall be paid by the agency, organization, or department to which the member belongs."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 2012.)

ACT 65

H.B. NO. 2410

A Bill for an Act Relating to the Military.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that a 2011 report by the RAND Corporation determined that the United States military accounted for more than eighteen per cent of all spending in Hawaii in 2009, or \$12,220,000,000. The report, which was commissioned by the Hawaii Institute for Public Affairs and The Chamber of Commerce of Hawaii, found that military expenditures in Hawaii during fiscal years 2007 to 2009 averaged \$6,527,000,000 per year in 2009 dollars — more than \$4,000,000,000 for personnel and over \$2,000,000,000 for the procurement of goods and services. Most of the procurement dollars were concentrated on Oahu and a third of that spending went to construction. The

report also found that the military was responsible for 101,533 jobs during 2007 to 2009, or 16.5 per cent of the State's total work force.

The RAND report confirms that the military plays a vital role in Hawaii's economy and rivals tourism for the largest industry in the State. It is therefore imperative that measures are taken to preserve the economic benefits of military operations in Hawaii, which include the various facilities of the United States Army (including Fort Shafter, Schofield Barracks, Tripler Army Medical Center, and Pohakuloa Training Area), Marine Corps (Marine Corps Base Hawaii), Navy (Joint Base Pearl Harbor Hickam and Pacific Missile Range Facility), Air Force (Bellows Air Force Station and Hickam Air Force Base), and Coast Guard (Station Maui and the Integrated Support Command in Honolulu).

The purpose of this Act is to strengthen the state economy and maintain the mutually beneficial relationship between the State and the military by requiring the governor to enter into a memorandum of understanding with the United States Department of Defense to provide continued support for the military's presence in Hawaii.

SECTION 2. The governor on behalf of the State shall enter into a memorandum of understanding with the United States Department of Defense to enhance the State's relationship with the military and provide continued support for the military's presence in Hawaii. The memorandum of understanding may be amended from time to time and shall establish roles and responsibilities for collaborative efforts to preserve and encourage military operations in Hawaii, which efforts may include:

- (1) Retaining or expanding military bases, including research, development, testing and evaluation, and training areas in the State;
- (2) Limiting the development of areas adjacent to military bases and training areas to ensure land uses that are compatible with base activities and that sustain military readiness;
- (3) Facilitating affordable housing located near military bases for military personnel and their families;
- (4) Offering recreational programs, facilities, and promotions for military personnel and their families;
- (5) Identifying civil obligations that may be postponed to accommodate deployed military personnel;
- (6) Supporting families dealing with military deployments;
- (7) Providing workforce training opportunities for military personnel to advance their careers and pursue education;
- (8) Exploring the feasibility of granting credit for military training toward civilian credentialing and licensing for certain trades;
- (9) Encouraging the hiring of military spouses; and
- (10) Promoting awareness, education, and appreciation for military operations in the State.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 2012.)

ACT 66

S.B. NO. 2768

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding to part III of article 8, nine new sections to be appropriately designated and to read as follows:

“§431:8-A Nonresident licensing. (a) Except as provided in section 431:8-317, a nonresident applicant shall receive a nonresident surplus lines broker license if:

- (1) The applicant is currently licensed and is in good standing as a resident surplus lines broker in the applicant's home state;
- (2) The applicant has submitted the proper request for licensure and has paid the fees required by section 431:7-101;
- (3) The applicant has submitted or transmitted to the commissioner the application for licensure that the applicant submitted to the applicant's home state, or in lieu of the same, a completed uniform application; and
- (4) The applicant's home state awards nonresident surplus lines broker licenses to residents of this State on the same basis.

(b) The commissioner may verify the surplus lines broker's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries.

(c) A nonresident surplus lines broker who moves from one state to another state or a resident surplus lines broker who moves from this State to another state shall file a change of address with the commissioner and shall provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application shall be required. Failure to timely inform the commissioner of a change in address shall result in a penalty pursuant to section 431:2-203.

§431:8-B Reciprocity. (a) The commissioner shall waive any requirements for a nonresident surplus lines broker license applicant with a valid license from the applicant's home state, except for the requirements imposed by section 431:8-A, if the applicant's home state awards nonresident surplus lines broker licenses to residents of this State on the same basis.

(b) A nonresident surplus lines broker's satisfaction of the surplus lines broker's home state's continuing education requirements for licensed surplus lines brokers shall constitute satisfaction of this State's continuing education requirements if the nonresident surplus lines broker's home state recognizes the satisfaction of its continuing education requirements imposed upon surplus lines brokers from this State on the same basis.

§431:8-C Exemption from examination. (a) Subject to section 431:8-B, an individual who applies for a non-resident surplus lines broker license in this State who was previously licensed to sell surplus lines insurance in another state shall not be required to complete any precensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was licensed in good standing in that state, or

the state's producer database records, maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, indicate that the surplus lines broker's license is or was in good standing.

(b) A person licensed as a surplus lines broker in another state who moves to this State and makes application within ninety days of establishing legal residence to become a resident licensee pursuant to section 431:8-310, shall not be required to satisfy the preclicensing educational components and examination otherwise required to obtain any line of authority previously held in the prior state, provided that the commissioner may impose these or other requirements by rule.

§431:8-D Surplus lines broker license examination. (a) An applicant for a surplus lines broker license shall pass a written examination unless exempt pursuant to section 431:8-C. The examination shall test the knowledge of the applicant concerning property, marine and transportation, vehicle, general casualty, and surety insurance, the duties and responsibilities of a surplus lines broker, and the insurance laws and rules of this State.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting fees pursuant to section 431:7-101. The fees collected shall be nonrefundable.

(c) An applicant who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being scheduled for another examination.

(d) An applicant's examination scores shall be valid for two years from the date of the examination.

§431:8-E Scope of examination. (a) The commissioner shall prescribe each examination, and each examination shall be of reasonably sufficient scope to test the applicant's knowledge relative to property, marine and transportation, vehicle, general casualty, and surety insurance, that may be dealt with under the license applied for, the duties and responsibilities relating thereto, and the laws of this State that are applicable to the licensee.

(b) The commissioner shall prepare and make available to surplus lines brokers a printed manual specifying in general terms the subjects that may be covered in any examination for a surplus lines broker license.

§431:8-F Time of examinations. (a) The commissioner shall give examinations within this State at times and places as may reasonably serve the convenience of both the commissioner and applicants.

(b) The commissioner may require a waiting period of not more than six months before giving a new examination to an applicant who has failed to pass two previous examinations for a surplus brokers license.

§431:8-G Prerequisites for license renewal. (a) To qualify for a license renewal, a licensee shall:

- (1) During the twenty-four months preceding a license renewal, complete the required number of credit hours specified in subsection (b) in approved continuing education courses; and
- (2) Pay the fees as required under section 431:7-101.

(b) The required number of credit hours in approved continuing education courses shall be as follows:

- (1) For a licensee authorized to sell surplus lines insurance but who does not hold a producer license, the requisite number of credit hours shall be twenty-four credit hours, consisting of twenty-one credit

hours relating to property, marine and transportation, vehicle, general casualty, or surety insurance, and three credit hours relating to ethics training or relating to the insurance laws and rules.

- (2) For a licensee who also holds a producer license to sell life or accident and health or sickness lines of insurance pursuant to article 9A, the total requisite number of credit hours shall be twenty-four credit hours, consisting of:
 - (A) Ten credit hours relating to life or accident and health or sickness insurance;
 - (B) Eleven credit hours relating to property, marine and transportation, vehicle, general casualty, or surety insurance; and
 - (C) Three credit hours relating to ethics training or to insurance laws and rules.

For purposes of this section, ethics training shall include but not be limited to the topics of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, policy replacement considerations, and conflicts of interest.

(c) Continuing education equivalents, as determined and approved by the commissioner, may include the teaching of continuing education courses and holding certain professional designations, but shall not include the use of carry-over credit hours earned in excess of the required hours in any two-year renewal cycle.

(d) Unless an extension of time has been granted in advance by the commissioner, a licensee's failure to satisfy all of the continuing education requirements by the renewal date shall result in that licensee's license being automatically placed on an inactive status. To reactivate a license, the licensee shall submit proof to the commissioner that the requisite number of credit hours has been completed and the licensee shall pay any required fees and penalties.

(e) After a licensee completes an approved continuing education course, the approved course provider shall issue to the licensee a certificate of completion in a form approved by the commissioner that certifies that the licensee has successfully completed the course. Both the licensee and a person authorized to sign on behalf of the approved course provider shall sign the certificate of completion. The approved course provider shall electronically submit the certificate of completion to the commissioner within fifteen days of course completion.

(f) This section shall not apply to a licensee granted an exemption by the commissioner from this section pursuant to section 431:8-B.

(g) The commissioner may grant an extension of time to meet the requirements of this section to a licensee on extended active military duty for a period of time equal to the number of days the licensee was on active military duty, provided there are no federal laws mandating an extension of time in a specified situation.

(h) A licensee need not retake the surplus lines broker license examination provided that all renewal requirements in this section are met or reactivation occurs within two years of the date of inactivation.

§431:8-H Continuing education recordkeeping. (a) Licensees shall maintain their own continuing education records and shall keep these records for four years after completion of an approved continuing education course.

(b) Approved course providers shall maintain attendance records for five years to permit the commissioner to verify the attendance and course completion of all licensees enrolled in an approved course. Approved course providers shall make their records available at all times to the commissioner.

§431:8-1 Commissioner's authority to grant waiver. Upon receiving a written request and a showing of good cause, the commissioner may grant a waiver of any requirement of an insurance law or rule as applied to an applicant or a producer."

SECTION 2. Section 431:2-203, Hawaii Revised Statutes, is amended as follows:

(1) By amending subsection (d) to read as follows:

"(d) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any order of the commissioner, the commissioner may issue a cease and desist order to enforce compliance with this code or any order of the commissioner, or bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any act in furtherance thereof. The commissioner shall have the discretion to include in a cease and desist order or request in an action brought in any court an assessment of a monetary penalty and restitution against any person who violates this code or who has violated an order of the commissioner."

(2) By amending subsection (g) to read as follows:

"(g) A monetary penalty and restitution may be imposed in addition to any applicable suspension, revocation, or denial of a license or certificate of authority."

SECTION 3. Section 431:8-102, Hawaii Revised Statutes, is amended as follows:

(1) By adding nine new definitions to be appropriately inserted and to read as follows:

"Approved continuing education course" means a course approved by the commissioner following receipt of recommendations from insurance professionals.

"Approved course provider" means an individual or entity that is approved to offer continuing education courses pursuant to article 9A.

"Business entity" means an association, corporation, individual, limited liability company, limited liability partnership, partnership, person, or other legal entity.

"Credit hour" means the value assigned to an approved continuing education course that is equivalent to at least fifty minutes of classroom instruction.

"Home state" means, with respect to an insured, the state in which an insured maintains the insured's principal place of business or, in the case of a surplus lines broker, the state in which the surplus lines broker maintains the surplus lines broker's principal residence or principal place of business and is licensed to act as a surplus lines broker; provided that if one hundred per cent of the insured risk is located out of the state where the insured maintains the insured's principal place of business or the state where the individual maintains the principal residence, the home state shall be the state where the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

"Inactive" means that the authority of a license issued by the commissioner is not in effect.

"Individual" means a natural person or a business entity.

"License" means a document issued by the commissioner authorizing a person to act as a surplus lines broker as specified in the document. The license itself shall not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurer.

"Licensee" means a surplus lines broker licensed under this article."

(2) By amending the definition of “surplus lines broker” to read as follows:

““Surplus lines broker” means any ~~[producer]~~ person licensed under section 431:8-310 to place insurance on risks resident, located, or to be performed in this State with unauthorized insurers.”

SECTION 4. Section 431:8-310, Hawaii Revised Statutes, is amended to read as follows:

“§431:8-310 Surplus lines broker license required; application and qualifications for license. (a) No person shall procure any contract of surplus lines insurance with an unauthorized insurer unless the person is licensed as a surplus lines broker.

(b) A person applying for a surplus lines broker license shall apply to the commissioner on the uniform application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, accurate, and complete to the best of the applicant’s knowledge and belief. Before approving the application, the commissioner shall find that the applicant:

- (1) Is at least eighteen years of age;
- (2) Has not committed any act that is a ground for a licensure sanction set forth in section 431:8-317;
- (3) Has paid the applicable fees set forth in section 431:7-101;
- (4) Has passed, within the two years immediately preceding the date of the application or issuance of the license, whichever is later, the applicable examination; and
- (5) Has submitted a full set of fingerprints, including a scanned file from a hard copy fingerprint, for the commissioner to obtain and receive national and state criminal history records checks from the Federal Bureau of Investigation and the Hawaii criminal justice data center, pursuant to section 846-2.7.

(c) The commissioner may require any documents reasonably necessary to verify the information contained in an application.

~~[(b)]~~ (d) The commissioner shall issue a surplus lines broker license to any producer licensed under article 9A, except producers licensed under section 431:9A-107(a)(1), (2), or (5), when the producer has:

- (1) Remitted the annual license fee to the commissioner as provided in article 7; and
- (2) Submitted a completed license application on a form furnished by the commissioner.

~~[(e)]~~ (e) A surplus lines broker license shall be inactivated if the licensee fails to pay any required fee or penalty. A surplus lines broker who allows the surplus lines broker’s license to become inactive for nonpayment of the renewal fee may reinstate that license without the necessity of a written examination; provided that the surplus lines broker:

- (1) Pays the fee and a penalty in the amount of fifty per cent of the then unpaid fees within twenty-four months from the inactivation date; and
- (2) Is in compliance with all requirements of chapter 431.

The license shall automatically expire if the surplus lines broker does not reinstate the surplus lines broker’s license within the twenty-four[-]month period.

~~[(d)]~~ (f) Business entities shall be eligible to be surplus lines brokers, upon meeting the following conditions:

- (1) The business entity licensee shall list individuals within the business entity who have satisfied all requirements of this part to become surplus lines brokers;
 - (2) Only those individuals listed on the business entity's license shall transact surplus lines business; and
 - (3) ~~[An individual]~~ A natural person licensed as a surplus lines broker shall be identified as the business entity's designated representative.
- ~~[(e)]~~ (g) Licensing procedure, duration, and related matters ~~[are]~~ shall be governed by [articles] article 7 [and 9A]."

SECTION 5. Section 431:8-317, Hawaii Revised Statutes, is amended as follows:

- (1) By amending its title to read as follows:

"§431:8-317 [Suspension] License denial, nonrenewal, suspension, or revocation [of license]."

- (2) By amending subsections (a) and (b) to read as follows:

"(a) The commissioner may ~~deny, place on probation,~~ suspend, revoke, or refuse to [extend] issue or renew any surplus lines broker's license and may levy a civil penalty in accordance with articles 2 and 3, or any combination of these actions, for any cause specified in any other provision of this chapter, or for any of the following causes:

- (1) Failure to file statements required by section 431:8-313 or to pay the tax required by section 431:8-315;
- (2) Failure to keep records or to allow the commissioner to examine the surplus lines broker's records as provided in this article;
- (3) Removal of office accounts and records from this State during the period in which the accounts are required to be maintained under this article;
- (4) Any of the causes for which a producer's license may be suspended or revoked under article 9A;
- (5) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (6) Wilful violation or knowing participation in the violation of any provision of this code;
- (7) Obtaining or attempting to obtain a license under this chapter through wilful misrepresentation or fraud, or failure to pass any examination required by section ~~[431:9A-105;]~~ 431:8-D;
- (8) Misappropriation, conversion to the licensee's own use, or illegally withholding moneys required to be held in a fiduciary capacity;
- (9) Material misrepresentation with intent to deceive of the terms or effect of any insurance contract, or engagement or intent to engage in any fraudulent transaction;
- (10) Commission of any unfair practice or fraud as defined in article 13;
- (11) Conduct of affairs under a license issued pursuant to this chapter in a manner that causes injury and loss to the public;
- (12) The issuance or purported issuance of any binder as to any insurer named in the binder if the licensee is not authorized to bind the insurer; or
- (13) Dealing or attempting to deal with insurance or exercising powers relative to insurance outside the scope of the licensee's ~~[licenses;]~~ license.

(b) The license of any ~~[partnership or corporation]~~ business entity may be denied, placed on probation, suspended, revoked, [or refused] not issued, or not renewed for any of the causes applicable to any individual designated in the license to exercise the ~~[partnership's or corporation's]~~ business entities' powers."

SECTION 6. Section 431:9A-102, Hawaii Revised Statutes, is amended by amending the definition of "credit hour" to read as follows:

"Credit hour" means the value assigned to:

- (1) ~~Fifty minutes of classroom instruction; or~~
- (2) ~~In the case of self-study courses, fifteen to twenty full pages of reading materials excluding graphics, quizzes, and illustrations, depending on content and type-face, as determined by the commissioner;~~

in an approved continuing education course[-] that is equivalent to at least fifty minutes of classroom instruction."

SECTION 7. Section 431:9A-105, Hawaii Revised Statutes, is amended by amending subsection (d) as follows:

"(d) An applicant's examination scores shall be valid for two years from the date of the examination ~~[or last renewal, whichever is later].~~"

SECTION 8. Section 431:9A-108, Hawaii Revised Statutes, is amended to read as follows:

"§431:9A-108 Nonresident licensing. (a) Except as provided in section 431:9A-112, a nonresident applicant shall receive a nonresident producer license if:

- (1) The applicant is currently licensed ~~[as a resident]~~ and is in good standing as a resident producer in the applicant's home state;
- (2) The applicant has submitted the proper request for licensure and has paid the fees required by section 431:7-101;
- (3) The applicant has submitted or transmitted to the commissioner the application for licensure that the applicant submitted to the applicant's home state, or in lieu of the same, a completed uniform application; and
- (4) The applicant's home state awards nonresident producer licenses to residents of this State on the same basis.

(b) The commissioner may verify the producer's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

(c) A nonresident producer who moves from one state to another state or a resident producer who moves from this State to another state shall file a change of address with the commissioner and shall provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application shall be required. Failure to timely inform the commissioner of a change in address shall result in a penalty pursuant to section 431:2-203.

~~[(d) Notwithstanding any other provision of this article, an applicant licensed as a surplus lines producer in the applicant's home state shall receive a surplus lines broker license if:~~

- ~~(1) The applicant complies with subsection (a); and~~
- ~~(2) The applicant's home state issues nonresident surplus lines broker licenses to residents of this State on the same basis.~~

~~(e)]~~ (d) Notwithstanding any other provision of this article, an applicant licensed as a limited line credit insurance producer or other type of limited lines producer in the person's home state shall receive a nonresident limited lines pro-

ducer license, pursuant to subsection (a), granting the same scope of authority as granted under the license issued by the producer's home state. Limited lines insurance authority is any authority granted by the home state, that restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 431:9A-107(a)(1) through (5)."

SECTION 9. Section 431:9A-124, Hawaii Revised Statutes, is amended to read as follows:

"§431:9A-124 Prerequisites for license renewal. (a) To qualify for a license renewal, a licensee shall:

- (1) During the twenty-four months preceding a license renewal, complete the required number of credit hours as set forth in subsection (b) in approved continuing education courses; and
- (2) Pay the fees as required under section 431:7-101.
- (b) The required number of credit hours shall be as follows:
 - (1) For a licensee authorized to sell lines of insurance in only one of the following groups:
 - (A) Life or accident and health or sickness; or
 - (B) Property, marine and transportation, vehicle, general casualty, or surety;
 the requisite number of credit hours shall be twenty-four credit hours, consisting of twenty-one credit hours relating to the line of authority for which the license is held and three credit hours relating to ethics training or relating to the insurance laws and the insurance rules;
 - (2) For a licensee with a license to sell lines of insurance in both groups in paragraph (1), the total requisite number of credit hours shall be twenty-four credit hours, consisting of:
 - (A) Ten credit hours relating to paragraph (1)(A);
 - (B) Eleven credit hours relating to paragraph (1)(B); and
 - (C) Three credit hours relating to ethics training or to insurance laws and rules.

For purposes of this section, ethics training shall include but shall not be limited to the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, policy replacement considerations, and conflicts of interest.

(c) Continuing education equivalents, as determined and approved by the commissioner, may include the teaching of continuing education courses and holding certain professional designations, but shall not include the use of carry-over credit hours earned in excess of the required hours in any two-year renewal cycle.

(d) Unless an extension of time has been granted in advance by the commissioner, a licensee's failure to satisfy all of the continuing education requirements by the renewal date shall result in that licensee's license being automatically placed on an inactive status. To reactivate a license, the licensee shall submit proof to the insurance division that the requisite number of credit hours has been completed and the licensee shall pay any required fees and penalties.

(e) After a licensee completes an approved continuing education course, the approved course provider shall issue to the licensee a certificate of completion in a form approved by the commissioner that certifies that the licensee has successfully completed the course. Both the licensee and a person authorized to sign on behalf of the approved course provider shall sign the certificate of comple-

tion. The approved course provider shall electronically submit the certificate of completion to the insurance division within fifteen days of course completion.

(f) This section shall not apply to a licensee granted an exemption by the commissioner from this section pursuant to section 431:9A-116.

(g) The commissioner may grant an extension of time to meet the requirements of this section to a licensee on extended active military duty for a period of time equal to the number of days the licensee was on active military duty.

(h) A licensee need not retake the producer license examination provided that renewal requirements in this section are met or reactivation occurs within two years of the date of inactivation."

SECTION 10. Section 431:9B-101, Hawaii Revised Statutes, is amended as follows:

(1) By amending the definition of "reinsurance intermediary" to read as follows:

"Reinsurance intermediary" or "producer" means a reinsurance intermediary-broker or a reinsurance intermediary-manager [as these terms are defined in this section] licensed pursuant to this article and article 9A."

(2) By repealing the definition of "licensed producer" or "producer".
~~["Licensed producer" or "producer" means a producer or reinsurance intermediary licensed pursuant to this chapter."]~~

SECTION 11. Section 431:9B-102, Hawaii Revised Statutes, is amended to read as follows:

"§431:9B-102 Licensure. (a) ~~[No person, firm, association, or corporation shall act as a reinsurance intermediary-broker in this State if the reinsurance intermediary-broker maintains an office either directly or as a member or employee of a firm or association or as an officer, director, or employee of a corporation:~~

- ~~(1) In this State, unless the reinsurance intermediary-broker is a licensed producer in this State; or~~
- ~~(2) In another state, unless the reinsurance intermediary-broker is a licensed producer in this State or another state having a law substantially similar to this law, or such reinsurance intermediary-broker is licensed in this State as a nonresident reinsurance intermediary.]~~

Persons, firms, associations, and corporations acting as a reinsurance intermediary-broker in this State shall maintain a license as a reinsurance intermediary-broker in this State. The reinsurance intermediary-broker shall maintain a license in every state where it maintains an office, either directly, as a member or employee of a firm or association, or as an officer, director, or employee of a corporation.

~~[(b) No person, firm, association, or corporation shall act as a reinsurance intermediary-manager:~~

- ~~(1) For a reinsurer domiciled in this State, unless the reinsurance intermediary-manager is a licensed producer in this State;~~
- ~~(2) In this State, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this State, unless the reinsurance intermediary-manager is [a] licensed producer in this State; or~~
- ~~(3) In another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this State or another~~

state having a law substantially similar to this law, or the person is licensed in this State as a nonresident reinsurance intermediary.]

(b) Persons, firms, associations, and corporations acting as a reinsurance intermediary-manager for a reinsurer domiciled in this State shall maintain a license as a reinsurance intermediary-manager in this State. A reinsurance intermediary-manager license shall be required to act as a reinsurance intermediary-manager in this State for a nondomestic reinsurer.

(c) The commissioner [shall] may require a reinsurance intermediary-manager subject to subsection (b) to:

- (1) File a bond from an insurance company licensed to do business within the State or with an insurance company approved by the commissioner in an amount equal to \$500,000 or ten per cent of the annual reinsurance premiums managed by the reinsurance intermediary-manager, whichever is greater, except that the bond amount under this paragraph shall not exceed \$10,000,000, for the protection of the reinsurer;
- (2) Maintain an errors and omissions policy, with an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, in an amount equal to \$250,000 or twenty-five per cent of the annual reinsurance premiums managed by the reinsurance intermediary-manager, whichever is greater, except that the policy limits under this paragraph shall not exceed \$10,000,000; and
- (3) Provide any other report required by the commissioner.

At the [time of application for licensure and each renewal, each] commissioner's request, the reinsurance intermediary-manager shall provide the commissioner with proof of the bond and the policy, and appropriate documentation to show that the bond and the policy continue to be in effect or that a new bond and a new policy have been secured.

- (d)(1) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of this article. Any such license issued to a firm or association [will] shall authorize all the members of that firm or association and any designated employees to act as reinsurance intermediaries under the license, and all those persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all those persons shall be named in the application and any supplements thereto.
- (2) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this article for service of process upon unauthorized insurers; and also shall furnish the commissioner with the name and address of a resident of this State upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the commissioner.
- (3) The commissioner shall issue a nonresident reinsurance intermediary license if:

- (A) The applicant is currently licensed as a resident reinsurance intermediary or insurance producer pursuant to article 9A and in good standing in the applicant's home state;
- (B) The applicant has submitted the proper request for licensure and paid the fees required by section 431:7-101;
- (C) The applicant has submitted or transmitted to the commissioner the application for licensure that the applicant submitted to the applicant's home state, or in lieu of the same, a completed uniform application; and
- (D) The person's home state awards nonresident licenses to residents of this State on the same basis.

(e) The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance of the license. Upon written request therefor, the commissioner shall furnish a summary of the basis for refusal to issue a license, which document shall be privileged and not subject to disclosure pursuant to chapter 92F.

(f) Licensed attorneys at law of this State when acting in their professional capacity as such shall be exempt from this section.

(g) Licensing procedure, duration, and related matters affecting reinsurance intermediaries shall be governed by articles 7 and 9A."

SECTION 12. Section 431:9B-106, Hawaii Revised Statutes, is amended to read as follows:

"§431:9B-106 Required contract provisions; reinsurance intermediary-managers. Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party that shall be approved by the reinsurer's board of directors. ~~[At least thirty days before the reinsurer assumes or cedes business through the reinsurance intermediary-manager, a true copy of the approved contract shall be filed with the commissioner for approval.]~~ The contract, at a minimum, shall provide that:

- (1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination;
- (2) The reinsurance intermediary-manager ~~[will]~~ shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the reinsurance intermediary-manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;
- (3) All funds collected for the reinsurer's account ~~[will]~~ shall be held by the reinsurance intermediary-manager in a fiduciary capacity and deposited in a bank that is a qualified United States financial institution. The reinsurance intermediary-manager may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager

- shall maintain a separate bank account for each reinsurer that it represents;
- (4) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager ~~[will]~~ shall keep a complete record for each transaction showing:
 - (A) The type of contract, limits, underwriting restrictions, classes or risks, and territory;
 - (B) Period of coverage, including effective and expiration dates, cancellation provisions and notice required for cancellation, and disposition of outstanding reserves on covered risks;
 - (C) Reporting and settlement requirements of balances;
 - (D) Rate used to compute the reinsurance premium;
 - (E) Names and addresses of reinsurers;
 - (F) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;
 - (G) Related correspondence and memoranda;
 - (H) Proof of placement;
 - (I) Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by section 431:9B-108(d), including the identity of retrocessionaires and percentage of each contract assumed or ceded;
 - (J) Financial records, including but not limited to, premium and loss accounts; and
 - (K) When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:
 - (i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative;
 - (5) The reinsurer ~~[will]~~ shall have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer;
 - (6) The contract ~~[cannot]~~ shall not be assigned in whole or in part by the reinsurance intermediary-manager;
 - (7) The reinsurance intermediary-manager ~~[will]~~ shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks;
 - (8) ~~[Sets]~~ The contract sets forth the rates, terms, and purposes of commissions, charges, and other fees that the reinsurance intermediary-manager may levy against the reinsurer;
 - (9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:
 - (A) All claims shall be reported to the reinsurer in a timely manner;
 - (B) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:
 - (i) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

- (ii) Involves a coverage dispute;
- (iii) May exceed the reinsurance intermediary- manager's claims settlement authority;
- (iv) Is open for more than six months; or
- (v) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;
- (C) All claim files shall be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate; the reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis; and
- (D) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination;
- (10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, ~~[that such]~~ interim profits shall not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business (or a later period set by the commissioner for specified lines of insurance) and not until the adequacy of reserves on remaining claims has been verified pursuant to section 431:9B-108(c);
- (11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;
- (12) The reinsurer shall, at a minimum, semiannually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager;
- (13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to the contract; and
- (14) Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting."

SECTION 13. Section 431:10D-622, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Approved continuing education course provider" means an individual or entity that is approved to offer continuing education courses pursuant to article 9A.

"Continuing education credit" means one continuing education credit hour. For the purposes of this paragraph, "credit hour" has the same meaning as set forth in section 431:9A-102."

SECTION 14. Section 431:10D-626, Hawaii Revised Statutes, is amended to read as follows:

"[§431:10D-626]] Insurance producer training. (a) An insurance producer shall not solicit the sale of an annuity product unless the insurance

producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

(b) ~~Any insurance producer who is authorized to sell [life or accident and health or sickness insurance and who engages in the sale of] annuity products on or before January 31, 2012, shall complete by January 31, 2012, a one-time training course on annuity products [that is approved by the commissioner and is conducted by an approved continuing education course provider.] meeting the requirements of subsection (d).~~

(c) ~~An insurance producer who obtains a life [insuree] or variable life and variable annuity products line of authority after January 31, 2012, shall not engage in the sale of annuities until the insurance [provider] producer has completed training [that meets the following] meeting the requirements[.] of subsection (d).~~

(d) The training required by this section shall be approved by the commissioner, be conducted by an approved continuing education course provider, and meet the following requirements:

- (1) The minimum length of the training shall be sufficient to qualify for at least four continuing education credits;
- (2) The training shall include information on the following topics:
 - (A) The types and various classifications of annuities available on the market;
 - (B) Identification of the parties to an annuity;
 - (C) How fixed, variable, and indexed annuity contract provisions affect consumers;
 - (D) The application of income taxation to qualified and non-qualified annuities;
 - (E) The primary uses of annuities; and
 - (F) Appropriate sales practices, replacement, and disclosure requirements; and
- (3) The training shall not include any marketing information for products of any particular insurer or training on sales techniques.

(e) A provider of an annuity training course intending to comply with this section shall register as an approved continuing education course provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in article 9A.

(f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with article 9A.

(g) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with article 9A.

(h) The satisfaction of the training requirements of another state that are substantially similar to the provisions of this section shall be deemed to satisfy the training requirements of this section in this State.

~~[(e)]~~ (i) An insurer shall verify that an insurance producer has completed the annuity training course required by this section before allowing the producer to sell an annuity product for the insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion [from the training course provider, or by obtaining reports from the commissioner, from training course providers,] of the training course or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved [insuree] continuing education course providers."

SECTION 15. In codifying the new sections added to part III of article 8 of chapter 431, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 17. This Act shall take effect on July 1, 2012; provided that sections 6, 13, and 14 shall take effect retroactive to January 1, 2012.

(Approved April 24, 2012.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 67

S.B. NO. 2224

A Bill for an Act Relating to the Tax Lien and Encumbrance Record.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a need to expand the ability of state and county agencies to pursue reimbursement of outstanding debts because many debtors ignore payment obligations and recovery efforts by state and county agencies. The legislature also finds that encumbrances on real property and motor vehicles are an effective mechanism to increase the likelihood of recovering outstanding debts.

Currently, agencies may record liens or claims with the director of finance of each county, but are required to pay a statutory fee that is deposited into the general fund. The legislature finds that the fee is hindering some agencies from utilizing the tax lien and encumbrance record to assist in recovery of outstanding debts owed to the agency.

The purpose of this Act is to:

- (1) Clarify that judgments are also valid claims for purposes of encumbrances recorded in the tax lien and encumbrance record;
- (2) Allow a taxpayer to enter into a payment agreement with the department of taxation to avoid a lien and encumbrance recordation; and
- (3) Clarify that state and county agencies are not required to pay a fee for the recording of an entry in the tax lien and encumbrance record, under certain conditions.

SECTION 2. Section 286-46, Hawaii Revised Statutes, is amended to read as follows:

“§286-46 Tax lien and encumbrance record. (a) The director of finance shall keep a book or record to be known as the “tax lien and encumbrance record” in which the following information shall be entered:

- (1) Notices of liens for internal revenue taxes payable to the United States and certificates of release thereof;

- (2) Notices of liens ~~[or]~~, taxes, or judgments payable to the State or county and certificates of release thereof;
- (3) Notices of seizure in accordance with law of any registered motor vehicle upon any writ of attachment, execution, or other process issued under authority of law;
- (4) Notices of restraining order or other order affecting the registration of any registered motor vehicle;
- (5) Notice of any proceeding or action affecting the title of a registered motor vehicle or the interest of the owner or legal owner thereof; and
- (6) Notice of release of any of the foregoing.

(b) With the exception of delinquent taxes and penalties imposed by section 249-10, the record shall show the year, month, day, hour, and minute at which the notice has been filed with the director of finance, shall show the nature and kind of lien or encumbrance claimed, the amount of tax or other claim, with interest, penalties, and costs, and shall identify the registered motor vehicles affected by the lien or encumbrance, and shall contain such further information as the director of finance may require. The record shall be a public record and may be arranged in such manner as the director of finance determines.

The interest of the owner or the legal owner in the motor vehicle shall not be deemed to be affected until the notice referred to in subsection (a)(1) to (5) has been filed with the director of finance in such form as the director of finance shall prescribe for entry in the tax lien and encumbrance record; provided the director of finance may require the payment of delinquent taxes and penalties as a condition precedent to the vehicle's renewal, registration, or transfer of ownership[-]; provided further that a taxpayer may enter into a payment plan with the director of taxation in lieu of paying a tax delinquency in full, in which case an entry in the tax lien and encumbrance record shall be avoided. The director of finance shall charge a fee of \$5 for each entry made in the tax lien and encumbrance record, which shall be deposited in the general fund[-]; provided that state and county agencies shall not be charged a fee for any entry made in the tax lien and encumbrance record if the state or county agency provides to the director of finance the license plate number or vehicle identification number of the vehicle to be flagged.

Nothing in this section shall be deemed to alter or amend any statute relating to tax liens or the enforcement thereof."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved April 24, 2012.)

ACT 68

S.B. NO. 2588

A Bill for an Act Relating to Limitation of Actions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 657, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§657- Civil action arising from sexual offenses; application; certificate of merit. (a) Notwithstanding any law to the contrary, no action for recovery of damages based on physical, psychological, or other injury or condition suffered by a minor arising from the sexual abuse of the minor by any person shall be commenced against the person who committed the act of sexual abuse more than:

- (1) Eight years after the eighteenth birthday of the minor or the person who committed the act of sexual abuse attains the age of majority, whichever occurs later; or
- (2) Three years after the date the minor discovers or reasonably should have discovered that psychological injury or illness occurring after the age of minor's eighteenth birthday was caused by the sexual abuse,

whichever comes later.

A civil cause of action for the sexual abuse of a minor shall be based upon sexual acts that constituted or would have constituted a criminal offense under part V or VI of chapter 707.

(b) For a period of two years after the effective date of Act , Session Laws of Hawaii 2012, a victim of child sexual abuse that occurred in this State who had been barred from filing a claim against the victim's abuser due to the expiration of the applicable civil statute of limitations that was in effect prior to the effective date of Act , Session Laws of Hawaii 2012, may file a claim in a circuit court of this State against the person who committed the act of sexual abuse.

A claim may also be brought under this subsection against a legal entity, except the State or its political subdivisions, if:

- (1) The person who committed the act of sexual abuse against the victim was employed by an institution, agency, firm, business, corporation, or other public or private legal entity that owed a duty of care to the victim; or
- (2) The person who committed the act of sexual abuse and the victim were engaged in an activity over which the legal entity had a degree of responsibility or control.

Damages against the legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity.

(c) A defendant against whom a civil action is commenced may recover attorney's fees if the court determines that a false accusation was made with no basis in fact and with malicious intent. A verdict in favor of the defendant shall not be the sole basis for a determination that an accusation had no basis in fact and was made with malicious intent. The court shall make an independent finding of an improper motive prior to awarding attorney's fees under this section.

(d) In any civil action filed pursuant to subsection (a) or (b), a certificate of merit shall be filed by the attorney for the plaintiff, and shall be sealed and remain confidential. The certificate of merit shall include a notarized statement by a:

- (1) Psychologist licensed pursuant to chapter 465;
- (2) Marriage and family therapist licensed pursuant to chapter 451J;
- (3) Mental health counselor licensed pursuant to chapter 453D; or
- (4) Clinical social worker licensed pursuant to chapter 467E;

who is knowledgeable in the relevant facts and issues involved in the action, who is not a party to the action.

The notarized statement included in the certificate of merit shall set forth in reasonable detail the facts and opinions relied upon to conclude that there is a

ACT 69

reasonable basis to believe that the plaintiff was subject to one or more acts that would result in an injury or condition specified in (a).”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 69

S.B. NO. 2877

A Bill for an Act Relating to Harbors Fireboat.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 266-22, Hawaii Revised Statutes, is amended to read as follows:

“§266-22 Maintenance of fire boat. The cost of operating and maintaining the fire boat ~~[transferred to the city and county of Honolulu under Act 175 of the Session Laws of 1951 by and through the city and county of Honolulu]~~ shall be borne by the department of transportation. ~~[For this purpose, the]~~ The department shall pay annually from its special fund [to the city and county of Honolulu the annual cost.] for the operation and maintenance costs.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2013.

(Approved April 24, 2012.)

ACT 70

S.B. NO. 2872

A Bill for an Act Relating to Procurement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103D-309, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In any contract ~~[pursuant to section 264-33]~~ involving not only state or county funds but supplemental funds from a utility, this section shall be applicable to that portion of the contract price payable out of state or county funds as well as that portion of the contract price payable out of funds from a utility, or payable out of state or county funds paid to a utility. The State or county may certify that there are sufficient funds for the utility’s portion of the contract price if the amounts that a utility is obligated to pay under a legal agreement between the utility and the State, or a county, are sufficient to pay that portion of the contract price and the legal agreement:

- (1) Includes a specific description of the utility’s share of the payment and terms of that payment;

- (2) Allows the State, county, or utility to provide progress payments or final payment based on the actual cost after a project is completed; and
- (3) Provides that in the event the State, county, or utility is delinquent in payments under the legal agreement, the State, county, or utility shall be responsible for any and all additional costs attributable to such late payment.

Any such legal agreement shall be executed prior to the execution of the state or county contract and shall not jeopardize any federal, state, or county funds.

For the purposes of this subsection:

“Legal agreement” includes a utility agreement, memorandum of understanding, or memorandum of agreement.

“Utility” means a utility company or entity.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved April 24, 2012.)

ACT 71

S.B. NO. 2698

A Bill for an Act Relating to the Information Privacy and Security Council.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 487N-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established an information privacy and security council within the department of accounting and general services for administrative purposes only. Members of the council shall be appointed no later than September 1, 2008, by the governor without regard to section 26-34 and shall be composed of the following representatives:

- (1) Executive agencies that maintain extensive personal information in the conduct of their duties, including the department of education, the department of health, the department of human resources development, the department of human services, and the University of Hawaii, to be selected by the governor;
- (2) The legislature, to be selected by the president of the senate and the speaker of the house of representatives;
- (3) The judiciary, to be selected by the administrator of the courts; and
- (4) The four counties, to be selected by the mayor of each county; provided that the mayor of each county shall determine the extent to which the county may or may not participate.

The ~~comptroller~~ chief information officer or the chief information officer's designee shall serve as chair of the council.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved April 24, 2012.)

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-24, Hawaii Revised Statutes, is amended to read as follows:

"§88-24 Composition of board. The board of trustees shall consist of eight members as follows:

- (1) The director of finance of the State, ex officio;
- (2) Four members of the system, two of whom shall be general employees, one of whom shall be a teacher, and one of whom shall be a retirant to be elected by the members and retirants of the system under rules adopted by the board governing the election to serve for terms of six years each, one of the terms to expire on January 1 of each even-numbered year; provided that, if after the close of filing of petitions for candidacy, a member is unopposed for election to a trustee position, the member shall be deemed and declared to be duly and legally elected to the position of trustee without an election; and
- (3) Three citizens of the State who are not employees, ~~[one] two~~ of whom shall ~~[be a responsible officer of a bank authorized to do business within the State, or a person of similar experience,]~~ have at least three years of experience providing financial services, including investments, to public, corporate, or private institutional clients, to be appointed by the governor, with the advice and consent of the senate, to serve for a term of six years each, one of the terms to expire January 1 of each odd-numbered year.

Each trustee shall serve until the trustee's successor is elected or appointed, as the case may be, and qualified. For the purpose of this section, the term "general employees" includes police officers and firefighters."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 2012.)

A Bill for an Act Relating to Domestic Violence.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 8, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§8- Domestic violence awareness month. The month of October shall be known and designated as "Domestic Violence Awareness Month" to promote public awareness of domestic violence as a significant societal, public

health, and criminal justice problem. This month is not and shall not be construed as a state holiday.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 25, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 74

H.B. NO. 1868

A Bill for an Act Relating to Telecommunications.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 269-1, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

““Basic exchange service” means those services consisting of single-line dial tone, touch-tone dialing, access to operator service, access to enhanced 911, telecommunications relay service, telephone directory, and access to directory-assistance service via 411 dialing.

“Dial tone” means the ability to make or receive telephone calls with or without operator intervention.

“Single-line” means a single-party line or a one-party line.

“Touch-tone dialing” means dual-tone multi-frequency, as opposed to dial-pulse signaling.”

SECTION 2. Section 269-16.85, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding section 269-16.9 or any other law to the contrary, the public utilities commission shall treat retail intrastate telecommunications services, under the commission’s classification of services relating to costs, rates, and pricing, as fully competitive and apply all commission rules in accordance with that designation. In addition, a telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to establish or otherwise modify in any manner its rates, fares, and charges, or to bundle any service offerings into a single or combined price package; provided that a telecommunications carrier, except upon receiving the approval of the commission, shall not charge a higher rate for any retail telecommunications basic exchange service than the rate for the same service included in the telecommunications carrier’s filed tariff. All rates, fares, charges, and bundled service offerings shall be filed with the public utilities commission for information purposes only.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Became law on April 25, 2012, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

A Bill for an Act Relating to Disposition of Dead Human Bodies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the roles and responsibilities of state agencies and custodians of unclaimed dead human bodies require clarification. Chapter 327, part II, Hawaii Revised Statutes, which authorizes the department of health to provide unclaimed dead human bodies to a university or other institution for educational or research purposes, is in direct contradiction with the Uniform Anatomical Gifts Act, chapter 327, part I, Hawaii Revised Statutes.

The purpose of this Act is to repeal the authority of the department of health to deliver or distribute an unclaimed dead human body to a university, hospital, or institution for medical education and research purposes, and to clarify the responsibilities of the person who has possession, charge, or control of an unclaimed dead human body with respect to gathering and providing information to state agencies.

SECTION 2. Chapter 327, Hawaii Revised Statutes, is amended by amending the title of part II to read as follows:

"PART II. [UNCLAIMED] DISPOSITION OF DEAD HUMAN BODIES"

SECTION 3. Section 327-32, Hawaii Revised Statutes, is amended to read as follows:

"§327-32 Administration; duties of health officers; etc]. [(a) The department of health shall administer this part and may provide by rules and regulations, promulgated pursuant to chapter 91, for the distribution and use of unclaimed bodies as authorized in section 327-31.

(b) The department upon receipt of notice of an unclaimed body shall deliver the body to a university, hospital, or institution for the purposes authorized in section 327-31.

(e)] Every head officer of a hospital, nursing home, correctional facility, funeral parlor, or mortuary and every county medical examiner or coroner and every state or county officer, and every other person who has possession, charge, or control of any unclaimed dead human body [required to be buried] that may be cremated at public expense pursuant to section 346-15 shall:

- (1) Exercise due diligence to notify the relatives, friends of the decedent[;], any representative of a fraternal society of which the deceased was a member, and any legally responsible party;**
- (2) [In the absence of any known relative or friend of the deceased or any representative of a fraternal society of which the deceased was a member, who desires to direct the disposition of the remains in a manner other than in this part provided, notify the department not later than immediately after the end of twenty-four hours following the death, stating, whenever possible, the name, age, sex, and cause of death of the decedent.] Submit in writing to the department of human services a description of the efforts used in making the determination that the dead human body is unclaimed in accordance with section 346-15, if payment for cremation is sought.**

~~[(d) Every head officer of a hospital, nursing home, or correctional facility in which a decedent was a patient or inmate at the time of death and whose body is unclaimed and required to be buried at public expense shall transmit to the department a medical history of the decedent for the purpose of identification and permanent record, which records shall be open to inspection by any state or county public official or prosecuting attorney.]~~

Nothing in this section shall be construed to affect the requirements relating to the filing of a certificate of death with the department of health pursuant to chapter 338."

SECTION 4. Section 327-36, Hawaii Revised Statutes, is amended to read as follows:

"§327-36 Final disposition of bodies retained for medical education and research purposes. A university, hospital, or institution ~~[which]~~ that holds ~~[an unclaimed]~~ a dead human body ~~[as provided in this part]~~ shall, when the body is deemed of no further value for medical education and research purposes, dispose of the remains by cremation, except as otherwise provided in section ~~[327-34.]~~ 327-14."

SECTION 5. Section 327-38, Hawaii Revised Statutes, is amended to read as follows:

"§327-38 Prohibitions; penalty. (a) No person shall give, offer, or promise any money or other things of value to any other person in consideration of receiving a dead human body.

(b) No person shall provide a dead human body to any other person in consideration of any money or other things of value, or any offer or promise of money or other things of value.

(c) No person shall display a dead human body for commercial purposes; provided that this subsection shall not apply to a display of a dead human body that:

- (1) Has been dead for more than eighty years;
- (2) Consists solely of human teeth or hair;
- (3) Is part of the ordinary display or viewing of the deceased at a funeral establishment or part of a similar funeral or memorial service;
- (4) Is an object of religious veneration;
- (5) Is an object of research or educational display in the possession of any federal, state, or county agency, any public or private institution of higher learning accredited under federal or state law, or any private entity in receipt of a federal, state, or county grant for health-related research; or
- (6) Is in the possession of a museum facility.

~~[(d) No university, hospital, or institution shall use a body received under this part for any purpose except medical education and research.~~

~~[(e)]~~ (d) Any person who violates this section shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

~~[(f)]~~ (e) As used in this section:

"Dead human body" means:

- (1) An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem; provided that the determination of death be made in accordance with accepted medical standards; and

ACT 76

- (2) Includes plastinated human bodies or remains, including tissue, organs, and other body parts, that are preserved from decay by replacing the water and fats in the human remains with a polymer.

“Museum facility” means a public or private nonprofit institution that:

- (1) Is accredited by the American Association of Museums or is part of an accredited college or university;
- (2) Is organized on a permanent basis for essentially educational or aesthetic purposes; and
- (3) Owns or uses tangible objects, cares for those objects, and exhibits them to the general public on a regular basis.”

SECTION 6. Section 327-31, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 327-33, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 327-34, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 327-35, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 327-37, Hawaii Revised Statutes, is repealed.

SECTION 11. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 76

S.B. NO. 2866

A Bill for an Act Relating to Comprehensive Offender Reentry System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 8, First Special Session Laws of Hawaii 2007, added a new chapter to the Hawaii Revised Statutes entitled “Comprehensive Offender Reentry System” to prepare incarcerated individuals for reentry into the community through programs and services that reflect best practices and evidence-based results. The goal of reentry is to provide offenders with greater opportunities to be rehabilitated while ensuring public safety and reducing recidivism.

Act 24, Special Session Laws of Hawaii 2009, amended section 353-10, Hawaii Revised Statutes, to incorporate the responsibilities of offender reentry into the long-established intake service centers and established the reentry commission to work with the department of public safety in monitoring and reviewing the comprehensive offender reentry program.

The purpose of this Act is to:

- (1) Create the offender reentry office to oversee offender reentry, thereby restoring the purpose of the intake service centers to screen, evaluate, and classify the admission of persons to community correctional centers; and

- (2) Reconstitute the reentry commission, expand its duties, and extend its repeal date.

SECTION 2. Chapter 353H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§353H- Offender reentry office. There shall be established within the department of public safety an offender reentry office to oversee the development and implementation of the comprehensive offender reentry system.

The offender reentry office shall:

- (1) Ensure that the present and future reentry needs of persons committed to correctional facilities are being evaluated and met in an effective and appropriate manner;
- (2) Develop and implement risk needs assessment tools to properly place offenders in programs and services;
- (3) Match offenders to programs and services that address risks and needs identified;
- (4) Monitor and record progress made by offenders while participating in prescribed programs and services;
- (5) Identify and make recommendations to address needs not addressed by programs and services;
- (6) Provide training opportunities for department staff and service providers in assessments and evidence-based practices;
- (7) Work closely and collaborate with the community service and work furlough programs located in the community correctional centers and correctional facilities;
- (8) Work closely and collaborate with the Hawaii paroling authority; and
- (9) Work closely and collaborate with community partners such as organizations, businesses, and concerned citizens.”

SECTION 3. Section 353-10, Hawaii Revised Statutes, is amended to read as follows:

“§353-10 [Reentry intake] Intake service centers. There shall be within the department of public safety, ~~[a reentry]~~ an intake service center for adults in each of the counties, to screen, evaluate, and classify the admission of persons to community correctional centers ~~[and to provide for the successful reentry of persons back into the community]~~. Each center shall be directed and managed by a manager and shall be staffed by a team of psychiatrists, social workers, technicians, and other personnel as may be necessary. The director of public safety may appoint full-time or part-time professional and clerical staff or contract for professional services ~~[to carry out the duties of the centers as identified in this section]~~.

The centers shall:

- (1) Provide orientation, guidance, and technical services;
- (2) Provide social-medical-psychiatric-psychological diagnostic evaluation;
- (3) Provide pretrial assessments on adult offenders for the courts and assist in the conduct of presentence assessments on adult offenders and the preparation of presentence reports when requested by the courts;
- (4) Provide correctional prescription program planning and security classification;

- (5) Provide such other personal and correctional services as needed for both detained and committed persons; and
- (6) Monitor and record the progress of persons assigned to correctional facilities who undergo further treatment or who participate in prescribed correctional programs;
- (7) ~~Ensure that the present and future reentry needs of persons committed to correctional facilities are being evaluated and met in an effective and appropriate manner;~~
- (8) ~~Provide additional reentry services to include working closely and collaborating with the furlough programs in each county that are currently managed by the department's institutions division;~~
- (9) ~~Work closely and collaborate with the Hawaii paroling authority; and~~
- (10) ~~Work closely and collaborate with the corrections program services division]."~~

SECTION 4. Act 24, Special Session Laws of Hawaii 2009, is amended by amending section 3 to read as follows:

"SECTION 3. (a) Effective January 1, 2010, there is established within the department of public safety a reentry commission to work with the department in monitoring and reviewing the comprehensive offender reentry program, including facility educational and treatment programs, rehabilitative services, work furloughs, and the Hawaii paroling authority's oversight of parolees. The reentry commission may make recommendations to the department, the Hawaii paroling authority, and the legislature regarding reentry and parole services. The reentry commission shall ensure that the comprehensive offender reentry system under chapter 353H, Hawaii Revised Statutes, is implemented as soon as practicable to provide programs and services that result in the release of inmates on parole when the maximum terms have been served instead of delaying the release for lack of programs and services.

(b) The reentry commission shall consist of ~~[eleven]~~ ten members who shall be ~~[appointed by the governor in accordance with section 26-34, Hawaii Revised Statutes,]~~ selected as follows:

- ~~[(1) Four members shall be selected by the governor; provided that at least one of the four shall be a former inmate and none shall be government employees;~~
- ~~(2) Two members shall be selected by the president of the senate;~~
- ~~(3) Two members shall be selected by the speaker of the house of representatives;~~
- ~~(4) One member shall represent the American Civil Liberties Union;~~
- ~~(5) One member shall represent the Community Alliance on Prisons; and~~
- ~~(6) One member shall be a former inmate who has successfully been reintegrated into the community.]~~
- (1) Three members shall be selected by the governor, of whom one shall be a rehabilitated former inmate;
- (2) Three members shall be selected by the president of the senate;
- (3) Three members shall be selected by the speaker of the house of representatives; and
- (4) The reentry coordinator shall serve as an ex officio nonvoting member.

(c) The reentry commission shall meet at least quarterly and members shall serve without compensation, but may be reimbursed for expenses, including travel expenses, that are necessary for the performance of their duties.

(d) The commission shall cease to exist on [July 1, 2014.] December 1, 2015."

SECTION 5. Members of the reentry commission appointed pursuant to Act 24, Special Session Laws of Hawaii 2009, shall cease to be members of the reentry commission on June 30, 2012. Beginning July 1, 2012, new members to the reentry commission shall be selected pursuant to section 4 of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 2012.

(Approved April 26, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 77

S.B. NO. 2865

A Bill for an Act Relating to Department of Public Safety Federal Reimbursement Maximization Special Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 353C-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Moneys in the federal reimbursement maximization special fund shall be used by the department [~~to meet the state match requirement for federal grants and costs associated with federal grant reporting requirements, including administrative expenses such as the creation and hiring of temporary staff; and for any other purpose deemed necessary by the department for maintaining existing federal grants as well as pursuing federal grants;~~] for the following purposes:

- (1) To meet the state match requirement for federal grants and costs associated with federal grant reporting requirements, including administrative expenses such as the hiring of temporary staff;
- (2) For any other purpose deemed necessary by the department for maintaining existing federal grants as well as pursuing federal grants;
- (3) To hire consultants to provide training for corrections officers;
- (4) To hire consultants to conduct facility or program evaluations;
- (5) To rent or purchase vehicles to transport inmates;
- (6) To provide pre-release and reentry programs;
- (7) To improve technology; and
- (8) To develop a plan for workforce recruitment and retention."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved April 26, 2012.)

A Bill for an Act Relating to Recycling.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. With technological advancement, many consumer electric products become obsolete within a very short period of time, creating large amounts of waste. Limited landfill space is a concern, and disposal of waste electric products into our landfills has the potential to impact humans and the environment. Proper waste handling and recycling of valuable materials are important aspects of protecting Hawaii's health and building a green economy.

SECTION 2. (a) There is established within the department of health the Hawaii electric device recycling task force to make recommendations for a workable recycling program for electric devices in Hawaii, keeping in mind the conditions and needs of the various islands.

(b) The task force shall consist of the following members:

- (1) The director of health or the director's designee, who shall serve as chairperson of the task force;
- (2) The program manager of the department of health's solid and hazardous waste branch;
- (3) The recycling coordinators of the counties of Kauai, Maui, and Hawaii and the city and county of Honolulu;
- (4) Up to two representatives of the Consumer Electronics Association, to be designated by the director of health;
- (5) A representative of the Consumer Electronics Retailers Council, which also includes manufacturers, to be designated by the director of health;
- (6) Up to three representatives of major retailers that already conduct take-back programs for electric devices, to be designated by the director of health;
- (7) Up to two representatives of major retailers that do not already conduct take-back programs for electric devices, to be designated by the director of health;
- (8) Up to six representatives of the local recycling industry, to be designated by the director of health;
- (9) Up to four representatives of the interstate and intrastate shipping or freight transportation industry, to be designated by the director of health;
- (10) Up to two representatives of consumer or industrial technology manufacturers that have experience with recycling programs for electric devices, to be designated by the director of health; and
- (11) Any other members that the director of health chooses to designate.

(c) The director of health may reduce the size of the task force at the director's discretion; provided that the task force maintains, to the extent reasonably possible, representation from the various sectors.

(d) No member of the task force, except for the members designated in paragraphs (b)(1) and (b)(2), shall be an employee of the State.

(e) The members of the task force shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(f) No member of the Hawaii electric device recycling task force shall be made subject to chapter 84, Hawaii Revised Statutes, solely because of that member's participation on the task force.

(g) The department of health shall submit a report of the task force's findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the 2013 regular session.

(h) The task force shall be dissolved on June 30, 2013.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

ACT 79

S.B. NO. 2167

A Bill for an Act Relating to Professions and Vocations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 464-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

““Land surveying” means any professional service or work which involves the application of specialized knowledge of the principles of mathematics, the physical and applied sciences, and the act of measuring, locating, establishing, or reestablishing lines, angles, elevations, natural and manmade features on the surface and immediate subsurface of the earth, or on the beds or surface of bodies of water, for the purpose of determining, establishing, describing, displaying, or interpreting the size, shape, topography, elevation datum planes, legal or geodetic location or relocation, or orientation of improved or unimproved real property and appurtenances thereto, including acreage. Land surveying includes but is not limited to:

- (1) Evaluating and determining boundary evidence collected through field surveys, boundary studies, or other means;
- (2) Using the principles of land surveying to:
 - (A) Determine the position for any monument or reference point which marks a property line, boundary corner, right-of-way, easement, or alignment of those lines;
 - (B) Set, reset, recover, or replace any such monument or reference point; or
 - (C) Perform topographical surveys;
- (3) Giving an authoritative reference or interpretation as to the location of a property line, boundary, right-of-way, easement, or any related corner position;
- (4) Creating or modifying record plats for cadastral surveys including consolidation, subdivision, resubdivision, rights-of-way, easements, determination of areas, mathematical closures, and elevations of land parcels;
- (5) Creating or modifying land surveying descriptions of property lines and easements, or editing their content for use in legal instruments that convey real property and property rights;

- (6) Rendering a statement or certification regarding the positional accuracy of land surveying maps, record drawings, field surveys, or measured survey data;
- (7) Creating or modifying the content of electronic data, computerized drawings, or any other survey map relative to the practice of land surveying; or
- (8) Setting, resetting, or replacing initial survey control points, including benchmarks to provide horizontal and vertical data on or in the vicinity of a construction or engineering project to enable any components of the project to be built in compliance with plans and specifications with respect to the project location, orientation, elevation, and relationship to property lines, easements, or right-of-way boundaries.

This definition shall not apply to any person working within the scope of practice of another licensed profession; provided that the person does not purport to be a land surveyor.

"Professional surveyor", "professional land surveyor", or "land surveyor" means a person who holds oneself out as able to practice, or who does practice, land surveying in this State."

2. By amending the definition of "landscape architect" to read:

"Landscape architect" means a person who holds oneself out as able to perform, or who does perform, any professional services such as consultation, investigation, reconnaissance, research, design, preparation of drawings and specifications, and observation of construction where the dominant purpose of the services is:

- (1) The preservation and enhancement of land uses and natural land features;
- (2) The location and construction of aesthetically pleasing and functional approaches for structures, roadways, and walkways; and
- (3) The design for equestrian trails, plantings, landscape irrigation, landscape lighting, and landscape grading.

This practice shall include the location, arrangement, and design of tangible objects and features as are incidental and necessary to the purposes outlined herein. Nothing herein shall preclude a duly licensed landscape architect from planning the development of land areas and elements used thereon or from performing any of the services described in this section in connection with the settings, approaches, or environment for buildings, structures, or facilities; provided that nothing in this chapter shall empower a landscape architect licensed under this chapter from practicing or offering to practice architecture or engineering in any of its various recognized branches."

3. By repealing the definition of "surveyor" or "land surveyor":

~~["Surveyor" or "land surveyor" means a person who holds oneself out as able to make, or who does make cadastral surveys of areas for their correct determination and description, either for conveyancing or for the establishment or reestablishment of land boundaries or the plotting of lands and subdivisions thereof."]~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

ACT 80

S.B. NO. 2009

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to article 10E to be appropriately designated and to read as follows:

“PART II. HOMEOWNERS INSURANCE CLAIMS HISTORY

§431:10E- Purpose. The purpose of this part is to regulate the use of claims history information for homeowners insurance and provide certain consumer protections with respect to the use of this information.

§431:10E- Scope; effective dates. This part shall apply to all homeowners insurance policies delivered or issued for delivery in this State after July 31, 2012.

§431:10E- Definitions. As used in this part, “inquiry” means a telephone call or other communication made to an insurer regarding the terms, conditions, or coverage afforded under an insurance policy that does not result in a claim, including questions concerning whether a policy will cover a loss or the process for filing a claim. The term shall not constitute a claim for purposes of section 431:13-103(a)(11).

§431:10E- Use of inquiries and other information. An insurer shall not refuse to issue, refuse to renew, or cancel a homeowners insurance policy, or establish rates for coverage based in whole or in part on inquiries made by any consumer to an insurer, unless the inquiry provides information not previously disclosed by the insured.”

SECTION 2. Article 10E, Chapter 431, Hawaii Revised Statutes, is amended by designating sections 431:10E-101 to 431:10E-103 as part I and inserting a title before section 431:10E-101 to read as follows:

“PART I. INSURABLE INTEREST IN PROPERTY; OVER-INSURANCE”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

ACT 81

S.B. NO. 2013

A Bill for an Act Relating to Dental Hygienists.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 447-1, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) No person shall practice dental hygiene, either gratuitously or for pay, or shall offer or attempt so to practice, or shall advertise or announce publicly or privately as being prepared or qualified so to practice without having a license as provided in this section. The original or a copy of the certificate of licensure shall be prominently displayed at all times in the workplace where the dental hygienist is employed or practices. A dental hygienist’s pocket identification card shall be readily available for viewing upon request to ensure the license is current. A licensed dental hygienist shall practice only under the supervision of a licensed dentist as provided in this chapter; provided that a licensed dental hygienist shall administer under the direct supervision of a licensed dentist only those categories of intra-oral block anesthesia listed in the course content submitted to the board pursuant to subsection (a).”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

ACT 82

S.B. NO. 1312

A Bill for an Act Relating to the Legacy Land Conservation Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 173A-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Commission” means the legacy land conservation commission.”

SECTION 2. Section 173A-2.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the department of land and natural resources a legacy land conservation commission. The commission shall consist of nine members, with at least one member from each of the counties, who shall be appointed in the manner and serve for the term set forth in section 26-34 as follows:

- (1) Four of the members of the commission shall be persons possessing scientific qualifications as evidenced by an academic degree in wild-life or marine biology, botany, forestry, ecology, resource management, biogeography, zoology, or geology;
- (2) One member shall be a person possessing membership in an environmental organization organized in the State;
- (3) One member shall be a person possessing membership in a land conservation organization organized in the State;
- (4) One member shall be a person possessing membership in a statewide agricultural association; and
- (5) One member shall be a person knowledgeable about native Hawaiian culture.

The chairperson of the natural area reserves system commission, or the chairperson’s designated representative from the natural area reserves system commission, shall serve as an ex officio voting member ~~[and the chairperson of the commission]~~. The members of the commission shall elect the chairperson of the commission. The members of the commission shall receive no compensation for their services on the commission but shall be entitled to reimbursement for

necessary expenses, including travel expenses, incurred in the discharge of their duties.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

ACT 83

S.B. NO. 2397

A Bill for an Act Relating to Fire Sprinklers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Fire sprinklers; residences. No county shall require the installation or retrofitting of automatic fire sprinklers or an automatic fire sprinkler system in:

- (1) Any new or existing detached one- or two-family dwelling unit in a structure used only for residential purposes; and
- (2) Non-residential agricultural and aquacultural buildings and structures located outside an urban area;

provided that this section shall not apply to new homes that require a variance from access road or fire fighting water supply requirements.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2012; provided that on June 30, 2017, this Act shall be repealed.

(Approved April 26, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 84

S.B. NO. 2386

A Bill for an Act Relating to the Native Hawaiian Roll Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 10H-3, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“[§10H-3] Native Hawaiian roll commission. (a) There is established a five-member Native Hawaiian roll commission within the office of Hawaiian affairs for administrative purposes only. The Native Hawaiian roll commission shall be responsible for:

- (1) Preparing and maintaining a roll of qualified Native Hawaiians; ~~[and]~~
- (2) Certifying that the individuals on the roll of qualified Native Hawaiians meet the definition of qualified Native Hawaiians. For purposes of establishing the roll, a "qualified Native Hawaiian" means an individual who the commission determines has satisfied the following criteria and who makes a written statement certifying that the individual:
 - (A) Is:
 - (i) An individual who is a descendant of the aboriginal peoples who, prior to 1778, occupied and exercised sovereignty in the Hawaiian islands, the area that now constitutes the State of Hawaii; or
 - (ii) An individual who is one of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act, 1920, or a direct lineal descendant of that individual;
 - (B) Has maintained a significant cultural, social, or civic connection to the Native Hawaiian community and wishes to participate in the organization of the Native Hawaiian governing entity; and
 - (C) Is eighteen years of age or older[-]; and
- (3) Receiving and maintaining documents that verify ancestry; cultural, social, or civic connection to the Native Hawaiian community; and age from individuals seeking to be included in the roll of qualified Native Hawaiians. Notwithstanding any other law to the contrary, these verification documents shall be confidential."

SECTION 2. Section 10H-4, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"[§10H-4]] Notice of qualified Native Hawaiian roll. (a) The commission shall publish notice of the certification of the qualified Native Hawaiian roll, update the roll as necessary, and publish notice of the updated roll of qualified Native Hawaiians[-]; provided that the commission shall not publish or release any verification documents of any qualified Native Hawaiian on the roll."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

ACT 85

S.B. NO. 2842

A Bill for an Act Relating to Civil Actions for Discriminatory Practices in Real Property Transactions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 515-9, Hawaii Revised Statutes, is amended to read as follows:

“§515-9 Enforcement. (a) The civil rights commission has jurisdiction over the subject of real property transaction practices and discrimination made unlawful by this chapter. The commission has the following powers:

- (1) To receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints alleging violations of this chapter in accordance with the procedure established in chapter 368, except that investigations shall be completed within one hundred days and a final administrative disposition shall be made within one year of the date of the receipt of the complaint, unless impracticable to do so;
- (2) At any time after a complaint is filed, to require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath or affirmation, and require the production of documents relevant to the complaint. Before a finding of reasonable cause, chapter 368 to the contrary notwithstanding, the commission may issue a notice of right to sue upon written request of the complainant which must be exercised within ninety days of receipt of the notice or one year after the filing of the complaint, whichever is later. The commission may make rules authorizing any individual designated to exercise these powers in the performance of official duties;
- (3) Chapter 368 to the contrary notwithstanding, after a finding of reasonable cause, to notify the complainant, respondent, or an aggrieved person on whose behalf the complaint was filed, that an election may be made to file a civil action in lieu of an administrative hearing. The election must be made not later than twenty days after receipt by the electing party of the notice. The electing party shall be provided with a notice of right to sue which must be exercised within ninety days of receipt of that notice or one year after the filing of the complaint, whichever is later. The commission will provide legal representation to the complainant in the event of an election by any party. After the filing of a civil action, the parties may stipulate to have the matter remanded for an administrative hearing;
- (4) To furnish technical assistance requested by persons subject to this chapter to further compliance with the chapter or an order issued thereunder;
- (5) To make studies appropriate to effectuate the purposes and policies of this chapter and to make the results thereof available to the public;
- (6) To render at least annually a comprehensive written report to the governor and to the legislature. The report may contain recommendations of the commission for legislative or other action to effectuate the purposes and policies of this chapter; and
- (7) In accordance with chapter 91, to adopt rules to effectuate the purposes and policies of this chapter, including rules requiring the inclusion in advertising material of notices prepared or approved by the commission.

(b) Nothing in chapter 368 or this section shall be deemed to preclude an aggrieved person from filing a civil action for discriminatory practices made unlawful by this chapter no later than two years after the occurrence or the termination of an alleged discriminatory practice; provided that, notwithstanding section 368-12, the commission shall issue a right to sue on a complaint filed with the commission if it determines that a civil action alleging similar facts has been filed.

(c) In a civil action filed under subsection (b), the remedies ordered by the court may include remedies as provided under sections 368-17 and 515-13 such as compensatory and punitive damages, legal and equitable relief, and reasonable attorney's fees and costs."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

ACT 86

S.B. NO. 2709

A Bill for an Act Relating to Furnishing the Date of Vital Events to Governmental Agencies Within the State of Hawaii that Request Verification.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that some governmental agencies within the State require information contained in vital statistics records for the purpose of updating official lists of persons in the ordinary course of the agency's activities. While section 338-18(g), Hawaii Revised Statutes, allows governmental agencies or organizations to obtain verification of information contained in vital statistics records, neither section 338-18(g), Hawaii Revised Statutes, nor any other section in chapter 338, Hawaii Revised Statutes, allows governmental agencies within the State to obtain additional information beyond verification of the information they already possess.

The legislature also finds that it is often necessary for governmental agencies within the State to acquire the date of a vital event for which they are seeking verification, but without a direct and tangible interest in the record as required by section 338-18(b), Hawaii Revised Statutes, additional information is not available to those governmental agencies and they are unable to update their lists. The legislature finds that allowing the department of health to disclose the dates of vital events to governmental agencies within the State will assist state and county agencies in maximizing the accuracy of their official lists, thus avoiding overpayments of benefits and waste of public funds.

SECTION 2. Section 338-18, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) The department shall not issue a verification in lieu of a certified copy of any such record, or any part thereof, unless it is satisfied that the applicant requesting a verification is:

- (1) A person who has a direct and tangible interest in the record but requests a verification in lieu of a certified copy;
- (2) A governmental agency ~~[or organization who]~~ that, for a legitimate government purpose, maintains and needs to update official lists of persons in the ordinary course of the agency's [or organization's] activities[;]. Notwithstanding other provisions of this section, upon request from a governmental agency of the State of Hawaii or its political subdivisions, the department may further disclose to that governmental agency the date of the vital event that has been verified;
- (3) A governmental~~[;]~~ agency, or private, social, or educational agency or organization [who] that seeks confirmation of a certified copy of any

such record submitted in support of or information provided about a vital event relating to any such record and contained in an official application made in the ordinary course of the agency's or organization's activities by an individual seeking employment with, entrance to, or the services or products of the agency or organization;

- (4) A private or government attorney who seeks to confirm information about a vital event relating to any such record ~~[which]~~ that was acquired during the course of or for purposes of legal proceedings; or
- (5) An individual employed, endorsed, or sponsored by a governmental~~;~~ agency, or private, social, or educational agency or organization who seeks to confirm information about a vital event relating to¹ preparation of reports or publications by the agency or organization for research or educational purposes."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

Note

1. Prior to amendment, "any such record in" appeared here.

ACT 87

S.B. NO. 2820

A Bill for an Act Relating to the Hawaii Advisory Commission on Drug Abuse and Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-4, Hawaii Revised Statutes, is amended to read as follows:

"§329-4 Duties of the ~~[commission.] Hawaii advisory commission on drug abuse and controlled substances.~~ The ~~[commission]~~ Hawaii advisory commission on drug abuse and controlled substances shall:

- ~~[(1) Act in an advisory capacity to the department of public safety relating to the scheduling of substances provided in part II of this chapter, by recommending the addition, deletion, or rescheduling of all substances enumerated in part II of this chapter.~~
- ~~(2) Act in an advisory capacity to the department of public safety relating to establishment and maintenance of the classes of controlled substances, as provided in part II of this chapter.~~
- ~~(3)~~ (1) Assist the department of health in coordinating all action programs of community agencies (state, county, military, or private) specifically focused on the problem of drug abuse~~[-];~~
- ~~[(4)]~~ (2) Assist the department of health in carrying out educational programs designed to prevent and deter abuse of controlled substances~~[-];~~

- ~~[(5) Encourage research on abuse of controlled substances. In connection with such research, and in furtherance of the enforcement of this chapter, it may, with the approval of the director of health:~~
 - ~~(A) Establish methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse;~~
 - ~~(B) Make studies and undertake programs of research to:~~
 - ~~(i) Develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;~~
 - ~~(ii) Determine patterns of abuse of controlled substances and the social effects thereof; and~~
 - ~~(iii) Improve methods for preventing, predicting, understanding, and dealing with the abuse of controlled substances.~~
- ~~(6)] (3) Create public awareness and understanding of the problems of drug abuse[-];~~
- ~~[(7)] (4) Sit in an advisory capacity to the governor and other state departments as may be appropriate on matters relating to the commission's work[-]; and~~
- ~~[(8)] (5) Act in an advisory capacity to the director of health in substance abuse matters under chapter 321, part XVI. For the purposes of this paragraph, "substance" shall include alcohol in addition to any drug on schedules I through IV of this chapter and any substance [which] that includes in its composition volatile organic solvents."~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

ACT 88

S.B. NO. 3031

A Bill for an Act Relating to Intoxicating Liquor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that section 281-78(b)(6), Hawaii Revised Statutes, has been interpreted to result in strict liability for liquor licensees if possession or use of illegal drugs or other unlawful conduct occurs on their premises, even if the unlawful conduct is timely suppressed by the licensee.

The purpose of this Act is to clarify that a licensee who timely suppresses unlawful activity occurring on the licensed premises shall not be deemed to be in violation of section 281-78(b)(6), Hawaii Revised Statutes.

SECTION 2. Section 281-78, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) At no time under any circumstances shall any licensee or its employee:

- (1) Sell, serve, or furnish any liquor to, or allow the consumption of any liquor by:
 - (A) Any minor;
 - (B) Any person at the time under the influence of liquor;
 - (C) Any person known to the licensee to be addicted to the excessive use of intoxicating liquor; or

- (D) Any person for consumption in any vehicle that is licensed to travel on public highways;
provided that the consumption or sale of liquor to a minor shall not be deemed to be a violation of this subsection if, in making the sale or allowing the consumption of any liquor by a minor, the licensee was misled by the appearance of the minor and the attending circumstances into honestly believing that the minor was of legal age and the licensee acted in good faith; and provided further that it shall be incumbent upon the licensee to prove that the licensee so acted in good faith;
- (2) Permit any liquor to be consumed on the premises of the licensee or on any premises connected therewith, whether there purchased or not, except as permitted by the terms of its license;
 - (3) Permit any liquor to be sold or served by any person eighteen to twenty years of age except in licensed establishments where selling or serving the intoxicating liquor is part of the minor's employment, and where there is proper supervision of these minor employees to ensure that the minors shall not consume the intoxicating liquor;
 - (4) Permit any liquor to be sold or served by any person below the age of eighteen years upon any licensed premises, except in individually specified licensed establishments found to be otherwise suitable by the liquor commission in which an approved program of job training and employment for dining room waiters and waitresses is being conducted in cooperation with the University of Hawaii, the state community college system, or a federally sponsored personnel development and training program, under arrangements that ensure proper control and supervision of employees;
 - (5) Knowingly permit any person under the influence of liquor or disorderly person to be or remain in or on the licensed premises;
 - (6) Fail [~~immediately~~] to timely prevent or suppress any violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct of any person on the premises;
 - (7) Sell any draught beer unless upon the faucet, spigot, or outlet wherefrom the beer is drawn there is attached a clear and legible notice, placard, or marker which in the English language indicates and declares the name or brand adopted by the manufacturer of the draught beer, so situated as to be clearly legible for a distance of at least ten feet from the spigot, faucet, or outlet, to a purchaser with normal vision; or
 - (8) Receive from a person, as payment or as a consideration for liquor, any personal or household goods, including clothing and food, or any implements of trade. Any person violating this paragraph shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 281-102."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

A Bill for an Act Relating to Electric Vehicle Parking.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify requirements pertaining to parking spaces for electric vehicles.

SECTION 2. Section 291-71, Hawaii Revised Statutes, is amended to read as follows:

“[§291-71] Designation of parking spaces for electric vehicles; charging [units.] system. ~~[All public, private, and government parking facilities that are available for use by the general public and have]~~ (a) Places of public accommodation with at least one hundred parking spaces available for use by the general public shall [designate] have at least one [per cent of] parking [spaces] space exclusively for electric vehicles [by December 31, 2011, provided that at least one of the parking spaces designated for electric vehicles is located near the building entrance and is] and equipped with an electric vehicle charging [unit.] system located anywhere in the parking structure or lot by July 1, 2012; provided that no parking space designated for electric vehicles shall displace or reduce accessible stalls required by the Americans with Disabilities Act Accessibility Guidelines. Spaces shall be designated, clearly marked, and the exclusive designation enforced. ~~[The electric vehicle charging units shall meet recognized standards, including SAE J1772 of the Society of Automotive Engineers.]~~ Owners of multiple parking ~~[lots]~~ facilities within the State may designate and electrify fewer parking spaces than required in one or more of their owned properties ~~[as long as]; provided that the scheduled requirement is met for the total number of aggregate spaces on all of their owned properties.~~

~~[When the number of registered electric vehicles in the State reaches five thousand, the spaces designated for electric vehicles shall increase to two per cent of parking spaces. The number of spaces designated for electric vehicles shall continue to increase by one per cent for each additional five thousand electric vehicles registered in the State until the percentage reaches ten per cent of parking spaces.]~~

~~(b) For the purposes of this section[, “electric vehicle” means an electric vehicle or neighborhood electric vehicle with an electric vehicle license plate.];~~

“Electric vehicle” means:

- (1) A neighborhood electric vehicle as defined in section 286-2; or
- (2) A vehicle, with four or more wheels, that draws propulsion energy from a battery with at least four kilowatt hours of energy storage capacity that can be recharged from an external source of electricity.

“Electric vehicle charging system” means a system that:

- (1) Is capable of providing electricity from a non-vehicle source to charge the batteries of one or more electric vehicles;
- (2) Meets recognized standards, including standard SAE J1772 of SAE International; and
- (3) Is designed and installed in compliance with article 625 of the National Electrical Code.

“Place of public accommodation” has the same meaning as that provided in section 489-2.”

SECTION 3. Section 291-72, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Beginning January 1, ~~[2012,]~~ 2013, any person who parks a non-electric vehicle in a space designated and marked as reserved for electric vehicles shall receive a warning.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 26, 2012.)

ACT 90

S.B. NO. 2110

A Bill for an Act Relating to the Preservation of Hawaii’s Moving Images.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that ‘Ulu‘ulu: The Henry Ku‘ualoha Giugni Moving Image Archive of Hawai‘i, honors the former United States Senate Sergeant at Arms. Henry Giugni was the first person of color and the first person of Polynesian ancestry to hold the position of United States Senate Sergeant at Arms. Mr. Giugni died in 2005. Funded by the United States Department of Education through a congressionally-directed grant, the moving image archive is dedicated to the care of film, videotape, and audiovisual materials, as well as the preservation of Hawaii’s rich moving image tradition.

‘Ulu‘ulu: The Henry Ku‘ualoha Giugni Moving Image Archive of Hawai‘i will be located at the University of Hawaii, West Oahu, and will include an online archive of recently preserved and digitized materials and an English and Hawaiian language website.

The purpose of this Act is to designate ‘Ulu‘ulu: The Henry Ku‘ualoha Giugni Moving Image Archive of Hawai‘i as the state archive for moving images and establish a special fund for its support.

SECTION 2. Chapter 304A, Hawaii Revised Statutes, is amended by adding a new section to part IV, to be appropriately designated and to read as follows:

“§304A-A ‘Ulu‘ulu: The Henry Ku‘ualoha Giugni Moving Image Archive of Hawai‘i. ‘Ulu‘ulu: The Henry Ku‘ualoha Giugni Moving Image Archive of Hawai‘i is designated as the official state archive for moving images. The qualifying standards and conditions related to the receipt of funds contained in chapter 42F shall not apply to funds received by ‘Ulu‘ulu: The Henry Ku‘ualoha Giugni Moving Image Archive of Hawai‘i; provided that if the archive contracts with a recipient or provider, the qualifying standards, conditions, and other provisions of chapter 42F shall apply to the recipient or provider and the contract.”

SECTION 3. Chapter 304A, Hawaii Revised Statutes, is amended by adding a new section to part V, subpart C, to be appropriately designated and to read as follows:

“§304A- ‘Ulu‘ulu: The Henry Ku‘ualoha Giugni Moving Image Archive of Hawai‘i special fund. There is established the ‘Ulu‘ulu: The Henry Ku‘ualoha

ACT 91

Giugni Moving Image Archive of Hawai'i special fund into which shall be deposited any legislative appropriations, federal or private grants, and any other funds collected for the purposes of the 'Ulu'ulu: The Henry Ku'uialoha Giugni Moving Image Archive of Hawai'i designated under section 304A-A. The fund shall be administered and expended by the University of Hawaii. Moneys in the fund shall be expended to support the activities of the moving image archive."

SECTION 4. In codifying the new section added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved April 27, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 91

H.B. NO. 2537

A Bill for an Act Relating to Disclosure of Records Concerning Applicants and Recipients of Human Services After an In Camera Review by the Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department and its agents shall keep records that may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant or recipient shall be confidential. The use or disclosure of information concerning applicants and recipients shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when the official duties are directly connected with the administration of any form of public assistance, medical assistance, food stamps, or social services;
- (2) Purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any form of public assistance, food stamps, medical assistance, or social services, including disclosure by the department[;] of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations regarding any aspect of theft, fraud, deception, or overpayment in connection with any aspect of public assistance, food stamps, medical assistance, or social services; provided that disclosure by recipient agencies and personnel shall be permitted under this section to the extent reasonably necessary to carry out the functions for which the information was provided;
- (3) Disclosure to the extent necessary to provide services for applicants and recipients, to determine eligibility, or to determine the amount

- of public assistance, including verification of information provided by the recipient of public assistance, medical assistance, or food stamps, or to determine the type, kind, frequency, and amount of social services, including health and mental health related services needed;
- (4) Disclosure to banks, financial institutions, or any other payor of a public assistance warrant or check of any information indicating that a public assistance warrant or check honored by the bank, institution, or payor has been forged or otherwise wrongfully presented for payment;
 - (5) Federal agencies responsible for the administration of federally assisted programs[;] that provide assistance in cash or in kind for services directly to individuals on the basis of need[;] and the certification of receipt of assistance to needy families with minor dependents to an employer for purposes of claiming tax credit under Public Law 94-12, the Tax Reduction Act of 1975, shall be permitted;
 - (6) Employees acting within the scope and course of their employment of recognized social welfare organizations as may be approved by the department;
 - (7) Purposes directly connected with any investigation, prosecution, or criminal proceeding conducted in connection with the licensure or operation of an adult day care center, including disclosure by the department[;] of information and documents to police departments, prosecutors' offices, the attorney general's office, or any other state, county, or federal agency engaged in the detection, investigation, or prosecution of violations of applicable state, county, and federal laws or regulations;
 - (8) Disclosure to the child support enforcement agency for obtaining or enforcing a child support order under chapter 576D;
 - ~~[(9) Purposes directly connected to and necessary for the career planning, job training, education, job placement, or employment of participants in the workfare program under part IX;~~
 - ~~(10)~~ (9) Disclosure of a recipient's residence and business address to law enforcement officers who request information if the information is needed for an official administrative, civil, or criminal law enforcement purpose to identify a recipient as a fugitive felon or parole violator, and in cases where the information is needed for an official purpose and where the department has informed the recipient of the circumstances in which the recipient's address may be released under section 92F-19(a)(1), (3), or (4); ~~and~~
 - ~~(11)~~ (10) Disclosure of reports and records relating to child abuse or neglect to the extent allowed by rules adopted under section 350-1.4[-]; ~~and~~
 - (11) Disclosure pursuant to a court order, after an in camera review of the records by the court, upon a showing of good cause by the party seeking the release of the records."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Became law on April 25, 2012, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

A Bill for an Act Relating to Health Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read as follows:

“§431:10A- Mammograms; referral not required. (a) For purposes of the annual screening mammogram coverage required under section 431:10A-116, no insurer shall require an insured person forty years of age and older to obtain a referral from a primary care provider or other physician for an annual screening mammogram.

(b) If the screening mammogram indicates that follow up services are advisable, a referral shall be made to the patient's primary care physician or other physician, as designated by the patient.”

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

“§432:1- Mammograms; referral not required. (a) For purposes of the annual screening mammogram coverage required under section 432:1-605, no mutual benefit society shall require a covered person forty years of age and older to obtain a referral from a primary care provider or other physician for an annual screening mammogram.

(b) If the screening mammogram indicates that follow up services are advisable, a referral shall be made to the patient's primary care physician or other physician, as designated by the patient.”

SECTION 3. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 2 to be appropriately designated and to read as follows:

“§432:2- Mammogram coverage required; referral not required. (a) A fraternal benefit society shall provide coverage for an annual screening mammogram to the same extent as required under section 431:10A-116; provided that no fraternal benefit society shall require a covered person forty years of age and older to obtain a referral from a primary care provider or other physician for an annual screening mammogram.

(b) If the screening mammogram indicates that follow up services are advisable, a referral shall be made to the patient's primary care physician or other physician, as designated by the patient.”

SECTION 4. Section 432D-23, Hawaii Revised Statutes, is amended to read as follows:

“§432D-23 Required provisions and benefits. Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the State after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-116.5, 431:10A-116.6, 431:10A-119,

431:10A-120, 431:10A-121, 431:10A-125, 431:10A-126, [and] 431:10A-122, and 431:10A-____, and chapter 431M.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved April 30, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 93

S.B. NO. 2126

A Bill for an Act Relating to Health Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the growth rate of the elderly population in the State, those sixty-five years and older, is expected to accelerate. The United States Census Bureau reports that the proportion of Hawaii’s population classified as elderly is expected to increase from 12.6 per cent in 1995 to 15.9 per cent in 2025. The increasing proportion of the elderly requires that the State take action to anticipate and prepare for the future health care needs of Hawaii’s population.

The United States Congress has already recognized the need for health care reform and enacted the Patient Protection and Affordable Care Act in 2010. The Patient Protection and Affordable Care Act is intended to improve health care in America by, among other things, establishing a competitive health insurance market, ending discrimination against pre-existing health conditions, expanding medicaid coverage, enhancing the quality of health care, and reducing health care fraud and waste. The legislature finds that Hawaii should take similar actions to improve health care in the State. One organizational change that could improve government efficiency and health care is to consolidate certain health care services that are currently managed by the department of health and the department of human services.

The legislature finds that the department of health has already established an office of health care assurance that manages state licensing and federal certification of medical and health care facilities, agencies, and services provided throughout the State to ensure compliance with established standards of care. Given the office’s existing functions, the legislature finds that health care services currently provided by the department of human services and the department of health should be consolidated under the jurisdiction of the office of health care assurance to improve the efficiency, capacity, and quality of state health care services.

The purpose of this Act is to consolidate the authority, duties, responsibilities, and jurisdiction of the department of human services and the department of health, as they relate to various health care services, by transferring to the department of health office of health care assurance on July 1, 2014, the programs of the department of human services relating to:

- (1) Home and community-based case management;
- (2) Community care foster family homes; and

(3) Adult day care.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding two new parts to be appropriately designated and to read as follows:

“PART . HOME AND COMMUNITY-BASED CASE MANAGEMENT AGENCIES AND COMMUNITY CARE FOSTER FAMILY HOMES

§321-A Definitions. As used in this part:

“Certificate of approval” means the certificate issued by the department or its designee that authorizes a person, agency, or organization to operate a community care foster family home.

“Client” means any person who receives home and community-based case management services to reside in a community care foster family home, expanded adult residential care home, or assisted living facility.

“Community care foster family home” or “home” means a home that:

- (1) Is regulated by the department in accordance with rules that are equitable in relation to rules that govern expanded adult residential care homes;
- (2) Is issued a certificate of approval by the department or its designee to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, at least one of whom shall be a medic-aid recipient, who are at the nursing facility level of care, who are unrelated to the foster family, and who are receiving the services of a licensed home and community-based case management agency; provided that the department, in its discretion, may certify a home for a third adult who is at the nursing level of care and a medicaid recipient; provided further that the:
 - (A) Home has been certified and in operation for not less than one year;
 - (B) Primary caregiver is a certified nurse aide, as defined in section 457A-1.5, who has completed a state-approved training program and other training as required by the department; and
 - (C) Substitute caregiver is a nurse aide, as defined in section 457A-1.5, who has completed a state-approved training program and other training as required by the department; and
- (3) Does not include expanded adult residential care homes or assisted living facilities.

“Department” means the department of health.

“Designee” means a person, institution, organization, or agency authorized by the department to issue certificates of approval to community care foster family homes and to monitor these homes for certificate compliance and quality assurance. The department’s designee shall perform these functions for the department and shall not, at the same time, function as a home and community-based case management agency or a community care foster family home as defined in this section.

“Home and community-based case management agency” means any person, agency, or organization licensed by the department to provide, coordinate, and monitor comprehensive services to meet the needs of clients whom the agency serves in a community care foster family home or any medicaid clients in an expanded adult residential care home, or an assisted living facility.

“License” means an approval issued by the department or its authorized agents for a person, agency, or organization to operate as a home and community-based case management agency.

§321-B Home and community-based case management agency, authority over and evaluation of. (a) Any person, agency, or organization engaged in providing, coordinating, or monitoring comprehensive services to clients in community care foster family homes, or medicaid clients in expanded adult residential care homes, and assisted living facilities, shall meet the standards of conditions, management, and competence set by the department, and hold a license in good standing issued for this purpose by the department.

(b) The department shall adopt rules pursuant to chapter 91 relating to:

- (1) Standards for the organization and administration of home and community-based case management agencies;
- (2) Standards of conditions, management, and competence of home and community-based case management agencies;
- (3) Procedures for obtaining and renewing a license from the department; and
- (4) Minimum grievance procedures for clients of case management services.

(c) As a condition for obtaining a license, a person, agency, or organization shall comply with rules adopted under subsection (b)(1), (2), and (3), and satisfy the background check requirements under section 321-D. The department may deny a license if:

- (1) An operator, employee, or new employee of the home and community-based case management agency has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less;
- (2) The department finds that the criminal history record of an operator, employee, or new employee poses a risk to the health, safety, or well-being of adults receiving care in community care foster family homes, expanded adult residential care homes, or assisted living facilities;
- (3) An operator, employee, or new employee of the home and community-based case management agency is a perpetrator of abuse as defined in section 346-222; or
- (4) The holder of or an applicant for a home and community-based case management agency license, or one of its employees, has a certificate of approval to operate a community care foster family home, or a license from the department to operate an adult residential care home, expanded adult residential care home, or assisted living facility.

(d) Upon approval of any home and community-based case management agency, the department or its authorized agents shall issue a license, which shall continue in force for one year, or for two years if a home and community-based case management agency has been licensed for at least one year and is in good standing pursuant to standards adopted by the department, unless sooner revoked for cause. The department or its authorized agents shall renew the license only if, after an annual or biennial evaluation, the agency continues to meet the standards established by the department.

(e) The department shall evaluate the home and community-based case management agency to determine compliance with the requirements established under this section:

- (1) Annually or biennially; or

- (2) Upon receipt of a complaint that the home and community-based case management agency is in violation of the requirements established under this section.
- (f) The department may suspend or revoke a license if the department deems that the agency is unwilling or unable to comply with the rules adopted under this section; provided that:
 - (1) Upon suspension or revocation of a license, the home and community-based case management agency shall no longer be licensed and shall immediately notify the agency's clients and community care foster family homes, expanded adult residential care homes, and assisted living facilities in which the agency is providing services to clients;
 - (2) A home and community-based case management agency whose license has been suspended or revoked may appeal the suspension or revocation to the department through its established process, but the appeal shall not stay the suspension or revocation;
 - (3) A suspended or revoked license may be reinstated if the department deems that the agency is willing and able to comply with the rules adopted under this section; and
 - (4) A revoked license shall be restored only after a new application is made and reviewed under this part.
- (g) Any home and community-based case management agency shall be subject to investigation by the department at any time and in the manner, place, and form as provided in the department's rules.
- (h) The department shall adopt standard forms of contract that the home and community-based case management agency shall use with each of its clients, community care foster family homes, expanded adult residential care homes, and assisted living facilities.
- (i) The home and community-based case management agency shall have a fiduciary duty to each client it serves.
- (j) A home and community-based case management agency shall not enter into an agreement that requires a community care foster family home to accept that agency's clients exclusively.

§321-C Community care foster family home, authority over and evaluation of.

- (a) Any person in any household who wants to take in, for a fee, any adult who is at the nursing facility level of care and who is unrelated to anyone in the household, for twenty-four hour living accommodations, including personal care and homemaker services, may do so only after the household meets the required standards established for certification and obtains a certificate of approval from the department or its designee.
- (b) The department shall adopt rules pursuant to chapter 91 relating to:
 - (1) Standards of conditions and competence for the operation of community care foster family homes;
 - (2) Procedures for obtaining and renewing a certificate of approval from the department;
 - (3) Minimum grievance procedures for clients of community care foster family home services; and
 - (4) Requirements for primary and substitute caregivers caring for three clients in community care foster family homes including:
 - (A) Mandating that primary and substitute caregivers be twenty-one years of age or older;

- (B) Mandating that primary and substitute caregivers complete a minimum of twelve hours of continuing education every twelve months or at least twenty-four hours of continuing education every twenty-four months;
- (C) Allowing the primary caregiver to be absent from the community care foster family home for no more than twenty-eight hours in a calendar week, not to exceed five hours per day; provided that the substitute caregiver is present in the community care foster family home during the primary caregiver's absence;
- (D) Where the primary caregiver is absent from the community care foster family home in excess of the hours as prescribed in subparagraph (C), mandating that the substitute caregiver be a certified nurse aide; and
- (E) Mandating that the substitute caregiver have, at a minimum, one year prior work experience as a caregiver in a community residential setting or in a medical facility.

(c) As a condition for obtaining a certificate of approval, community care foster family homes shall comply with rules adopted under subsection (b) and satisfy the background check requirements under section 321-D. The department or its designee may deny a certificate of approval if:

- (1) An operator or other adult residing in the community care foster family home, except for adults receiving care, has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less;
- (2) The department or its designee finds that the criminal history record of an operator or other adult residing in the home, except for adults receiving care, poses a risk to the health, safety, or well-being of adults in care; or
- (3) An operator or other adult residing in the community care foster family home, except for adults receiving care, is a perpetrator of abuse as defined in section 346-222.

(d) Upon approval of a community care foster family home, the department or its designee shall issue a certificate of approval that shall continue in force for one year, or for two years if a community care foster family home has been certified for at least one year and is in good standing pursuant to standards adopted by the department, unless sooner suspended or revoked for cause. The department or its designee shall renew the certificate of approval only if, after an annual or biennial evaluation, the home continues to meet the standards required for certification.

(e) Any community care foster family home shall be subject to investigation by the department or its designee at any time and in the manner, place, and form as provided in procedures to be established by the department.

(f) The department or its designee may suspend or revoke a certificate of approval if the department or its designee deems that a community care foster family home is unwilling or unable to comply with the rules adopted under subsection (b); provided that:

- (1) The suspension or revocation shall be immediate when conditions exist that constitute an imminent danger to the life, health, or safety of adults receiving care;
- (2) A community care foster family home whose certificate of approval has been suspended or revoked shall immediately notify its clients and their case managers;

- (3) A community care foster family home whose certificate of approval has been suspended or revoked may appeal to the department through its established process, but the appeal shall not stay the suspension or revocation;
- (4) A suspended or revoked certificate of approval may be reinstated if the department or its designee deems that the home is willing and able to comply with the rules adopted under subsection (b); and
- (5) A revoked certificate of approval shall be restored only after a new application for a certificate of approval is submitted to the department or its designee and approved.
- (g) Any community care foster family home shall be subject to monitoring and evaluation by the department or its designee for certification compliance and quality assurance on an annual or biennial basis.

§321-D Background checks. (a) The department shall develop standards to ensure the reputable and responsible character of operators, employees, volunteers, and other adults regularly present, except for adults in care, of the programs identified in this part.

- (b) An applicant for the programs identified in this part shall:
 - (1) Be subject to criminal history record checks in accordance with section 846-2.7;
 - (2) Be subject to adult abuse perpetrator checks, if the individual has direct contact with a client. For the purposes of this section, "adult abuse perpetrator check" means a search to determine whether an individual is known to the department of human services as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual's name and birth date in the department of human services's adult protective service file; and
 - (3) Provide consent to the department or its designee to conduct an adult abuse perpetrator check and to obtain other criminal history record information for verification.
- (c) New employees of the programs identified in this part shall be fingerprinted within five working days of employment for the purpose of complying with the criminal history record check requirement.
- (d) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section 846-2.7 on applicants for programs identified in this part. The Hawaii criminal justice data center may assess the applicants and operators, employees, and new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purposes for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.
- (e) The department or its designee shall make a name inquiry into the criminal history records and the adult protective service file for the first two years a home and community-based case management agency is licensed and annually or biennially thereafter depending on the licensure status of the home and community-based case management agency.
- (f) An applicant for a certificate of approval as a community care foster family home, operators, and other adults residing in a community care foster family home shall:
 - (1) Be subject to criminal history record checks in accordance with section 846-2.7;
 - (2) Be subject to adult abuse perpetrator checks, if the individual has direct contact with a client. For the purposes of this section, "adult

abuse perpetrator check” means a search to determine whether an individual is known to the department of human services as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual’s name and birth date in the department of human services’ adult protective service file; and

- (3) Provide consent to the department to conduct an adult abuse perpetrator check and to obtain other criminal history record information for verification.

(g) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center on applicants for certificates of approval as community care foster family homes and operators and other adults residing in community care foster family homes, except for adults receiving care. The Hawaii criminal justice data center may assess the applicants and operators and other adults a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

(h) The department or its designee shall make a name inquiry into the criminal history records and the adult protective service file for the first two years a community care foster family home is certified and annually or biennially thereafter depending on the certification status of the community care foster family home.

§321-E Penalty. Any person violating this part or any rule adopted pursuant to this part shall be fined not more than \$500.

PART . SERVICES TO ADULTS

§321-F Purpose. The purpose of this part is to establish the nature and type of services to elders, disabled, and aged who are qualified to receive social services according to standards and conditions prescribed by the department of health.

§321-G Definitions. As used in this part:

“Day care center” includes a place designated for group care for four or more adults or a family home providing care for two or more adults.

“Day care center for elder disabled and aged persons” means a place maintained and operated by an individual, organization, or agency for the purpose of providing supportive and protective care to a disabled or aged person with or without charging a fee during the attendant working day.

“Department” means the department of health.

“Disabled and aged persons” means any person who lives with a spouse, relative, or friend but who requires temporary supervision and care during the absence of those persons from the home or residence.

“Elder” means any person as may otherwise be defined by the department, who desires and needs counseling, guidance, and assistance to modify or resolve the social, economic, educational, recreational, physical, or mental problem that impedes the person’s personal functioning and well-being.

Nothing in section 321-H shall be construed to include a relative caring for another relative; a neighbor or friend caring for an adult by mutual choice and agreement; or any center or facility conducted primarily or solely for educational, social, recreational, athletic, or other group functions that may provide for twenty-four hour boarding, personal, or nursing care accommodation.

§321-H Day care centers for disabled and aged persons. The department shall be responsible for the recruitment and licensing of day care centers for elder disabled and aged persons. The department shall adopt any necessary rules, regulations, and minimum standards to protect the best interests of adults receiving care in day care centers. The rules and regulations shall have the force and effect of law and shall be administered by the department.

§321-I Purchase of service. The department may negotiate the purchase of day care services for elder disabled and aged recipients, including other social services from individuals or other organizations, institutions, or agencies. Other social services shall be necessary and essential to maximize the functioning and well-being of the recipient. Purchase of day care center services shall include services that enhance the social functioning of each participant, promote and develop activities in daily living and personal independence by therapeutic arts and crafts, community excursions, hobby cultivation, group dynamics, and provisions for counseling to the participants and their families.

§321-J Penalty. Any individual, organization, or agency operating a day care center for disabled or aged persons without a license from the department shall be cited and fined an amount deemed to be appropriate by the court, but not to exceed a maximum of \$5,000.

§321-K Criminal history record checks. (a) For the purposes of this section:

“Conviction for a relevant crime” means any federal or state conviction for any relevant crime as defined in this section.

“Criminal history record name inquiry” means a search by name and other identifying information using the state computerized criminal history record information system.

“Department” means the department of health.

“Name inquiry” means a criminal history record check conducted using the name and other identifying information of the individual in lieu of a fingerprint check.

“Relevant crime” means:

- (1) Any offense described in Title 42 United States Code section 1320a-7 (section 1128(a) of the Social Security Act); or
- (2) A crime of such a serious nature or circumstance that the department finds its perpetrator to pose a risk to the health, safety, or well-being of a patient or resident. This shall include but not be limited to murder; manslaughter; assault; sex offenses; domestic violence; and the use, sale, manufacture, or distribution of dangerous drugs or controlled substances.

(b) The department shall adopt rules pursuant to chapter 91 to establish standards regarding the reputable and responsible character of service providers who have direct contact with individuals receiving services under this part, including licensed adult day care center operators, employees, subcontracted service providers and their employees, and adult volunteers.

(c) Individuals identified under subsection (b) shall:

- (1) Meet the standards regarding the reputable and responsible character of service providers;
- (2) Be subject to criminal history record checks in accordance with section 846-2.7;
- (3) Sign a waiver stating that the department shall not be liable to the individual; and

- (4) Provide consent to the department or its designee to obtain criminal history record information for verification.

New employees and adult volunteers shall consent to be fingerprinted, shall supply the necessary information to enable the criminal history record check prior to the start of employment or volunteering, and shall sign a waiver stating that the department shall not be liable to the employee or volunteer.

(d) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center on individuals identified in subsection (b) for the first two years that an individual identified in subsection (b) is required to have such checks, and shall conduct a criminal history record name inquiry into the state criminal history records annually or biennially thereafter.

(e) The department may take appropriate action if it finds that the criminal history of the individual identified under subsection (b) may pose a risk to the health, welfare, and safety of service recipients. Such action may include denying a certificate of approval to operate an adult day care center.

(f) Notwithstanding any other law to the contrary, for purposes of this section, the department shall be exempt from section 831-3.1 and shall not be required to conduct investigations, notifications, or hearings under this section in accordance with chapter 91.

(g) The employer or the employee or the individual who is being screened may bear the costs of processing fingerprints and the state criminal history record check.

(h) The department, in obtaining and relying upon the results of the state criminal history record check, shall be presumed to be acting in good faith and shall be immune from civil liability for taking or recommending action based upon the criminal history record information. The presumption of good faith may be rebutted upon a showing by the person or entity acknowledging a lack of good faith by a preponderance of the evidence that the department relied upon information or opinion that it knew was false or misleading.

(i) Nothing in this section shall affect the rights, obligations, remedies, liabilities, or standards of proof under chapters 368 and 378.

(j) The criminal history record information obtained under this section shall be used exclusively by the department for the purpose of establishing the reputable and responsible character of the individuals identified in subsection (b) to ensure that the health, welfare, and safety of service recipients will not be at risk."

SECTION 3. Section 346-53, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) The director, pursuant to chapter 91, shall determine the rate of payment for domiciliary care, including care provided in licensed developmental disabilities domiciliary homes, community care foster family homes, and certified adult foster homes, to be provided to recipients who are eligible for Federal Supplementary Security Income or public assistance, or both. The director shall provide for level of care payment as follows:

- (1) Beginning on July 1, 2008, for adult residential care homes classified as facility type I, licensed developmental disabilities domiciliary homes as defined under section 321-15.9, community care foster family homes as defined under section ~~[346-331,]~~ 321-A, and certified adult foster homes as defined under section 321-11.2, the state supplemental payment shall not exceed \$651.90; and

- (2) Beginning on July 1, 2008, for adult residential care homes classified as facility type II, the state supplemental payment shall not exceed \$759.90.

If the operator does not provide the quality of care consistent with the needs of the individual to the satisfaction of the department, the department may remove the recipient to another facility.

The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection shall allow the director to remove a recipient from an adult residential care home or other similar institution if the recipient does not desire to be removed and the operator is agreeable to the recipient remaining, except where the recipient requires a higher level of care than provided or where the recipient no longer requires any domiciliary care.

(d) On July 1, 2006, and thereafter, as the department determines a need, the department shall authorize a payment, as allowed by federal law, for resident clients receiving supplemental security income in adult residential care home type I and type II facilities, licensed developmental disabilities domiciliary homes as defined under section 321-15.9, community care foster family homes as defined under section [346-331,] 321-A, and certified adult foster homes as defined under section 321-11.2, when state funds appropriated for the purpose of providing payments under subsection (c) for a specific fiscal year are not expended fully within a period that meets the requirements of the department's maintenance of effort agreement with the Social Security Administration.

The payment shall be made with that portion of state funds identified in this subsection that has not been expended.

The department shall determine the rate of payment to ensure compliance with its maintenance of effort agreement with the Social Security Administration."

SECTION 4. Section 346-97, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) The department shall adopt rules pursuant to chapter 91 establishing standards regarding the reputable and responsible character of service providers who have direct contact with individuals receiving services under this part, including:

- [~~(1)~~] ~~Licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers;~~
- (2) (1) Purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch;
- [~~(3)~~] ~~Foster~~ (2) ~~The foster~~ grandparent program, ~~[retired and senior volunteer program,]~~ senior companion program, and respite companion program participants; and
- [~~(4)~~] (3) Contracted and subcontracted service providers and their employees and new employees who provide home and community-based services under section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services."

2. By amending subsection (e) to read:

"(e) The department may take appropriate action if it finds that the criminal history of the individual identified under subsection [(b)] may pose a

risk to the health, welfare, and safety of service recipients. ~~[Such]~~ An action may include:

- (1) ~~Denying a certificate of approval to operate an adult day care center; or~~
- (2) ~~Refusing~~ refusing to use an individual as a service provider.”

SECTION 5. Section 346D-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There may be established a monthly needs allowance for individuals living in:

- (1) Adult residential care home type I and type II facilities;
- (2) Licensed developmental disabilities domiciliary homes as defined in section 321-15.9;
- (3) Community care foster family homes as defined in section ~~[346-331;]~~ 321-A;
- (4) Certified adult foster homes as defined in section 321-11.2;
- (5) Domiciliary care as defined in section 346-1;
- (6) A nursing facility as defined in section 346E-1; or
- (7) A community-based residence as part of the residential alternatives community care program.”

SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for individuals with intellectual disabilities, hospital, rural health center and rehabilitation agency, and, in the case of any of the above facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;

- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of ~~[human services]~~ health on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section ~~[346-335;]~~ 321-D;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of ~~[human services]~~ health on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section ~~[346-97;]~~ 321-K;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;

- (22) The department of human services on foster grandparent program, ~~[retired and senior volunteer program,]~~ senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act, Title 42 United States Code Section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- (27) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license; and
 - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license, as provided by section 489D-9;
- (28) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (29) The Hawaii health systems corporation on:
 - (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- (30) The department of commerce and consumer affairs on:
 - (A) An applicant for a mortgage loan originator license; and
 - (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license, as provided by chapter 454F; and
- (31) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 7. Chapter 346, part IV, subpart A, Hawaii Revised Statutes, is repealed.

SECTION 8. Chapter 346, part XIV, Hawaii Revised Statutes, is repealed.

SECTION 9. All employees who occupy civil service positions and whose functions are transferred to the department of health by this Act shall retain their civil service status (permanent or temporary). Employees shall be transferred without loss of salary, seniority, retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act; provided that the employees possess the minimum qualifications and public employment requirements for the class, position, or both, to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any employee who prior to this Act is exempt from civil service and is transferred as a consequence of this Act may continue to retain the employee's exempt status, but shall not be appointed to a civil service position because of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, any vacation and sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act; provided that the employees possess legal and public employment requirements for the position to which transferred or appointed, as applicable; provided that subsequent changes in status may be made pursuant to applicable employment and compensation laws. The director may prescribe the duties and qualifications of such employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes.

SECTION 10. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of human services relating to the functions transferred to the office of health care assurance in the department of health shall be transferred with the functions to which they relate.

SECTION 11. All unencumbered moneys deposited in any revolving or special fund controlled by the department of human services relating to the functions transferred to the department of health shall lapse to the credit of the general fund.

SECTION 12. All rules, policies, procedures, guidelines, and other material adopted or developed by the department of human services to implement provisions of the Hawaii Revised Statutes and that are reenacted or made applicable to the office of health care assurance in the department of health by this Act shall remain in full force and effect until amended or repealed by the director of health pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the department of human services or the director of human services in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of health, office of health care assurance, or the director of health, as appropriate.

SECTION 13. All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of human services pursuant to the provisions of the Hawaii Revised Statutes that are reenacted or made applicable to the office of health care assurance in the department of health by this Act, shall remain in full force and effect. From July 1, 2014, every reference to the department of human services or the director of human services therein shall be construed as a reference to the department of health or the director of health, as appropriate.

SECTION 14. If any part of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, the conflicting part of this Act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this Act in its application to the agencies concerned. The rules in effect as a result of this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

SECTION 15. The department of health and the department of human services shall collaborate to implement the transfers and transitions required under this Act with as little disruption as is possible to the ongoing duties, responsibilities, and public services each respective department currently provides.

SECTION 16. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 18. This Act shall take effect on July 1, 2014.

(Approved April 30, 2012.)

ACT 94

S.B. NO. 2247

A Bill for an Act Relating to Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 803-42, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) (1) It shall not be unlawful under this part for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication services, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of the officer’s, employee’s, or agent’s employment while engaged in any activity that is either a necessary incident to the rendition of the officer’s, employee’s, or agent’s service or to the protection of the rights or property of the provider of that service; provided that providers of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.
- (2) It shall not be unlawful under this part for an officer, employee, or agent of the Federal Communications Commission, in the normal course of the officer’s, employee’s, or agent’s employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of Title 47, chapter 5, of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

- (3) (A) It shall not be unlawful under this part for a person not acting under color of law to intercept a wire, oral, or electronic communication when the person is a party to the communication or when one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State.
- (B) It shall not be unlawful for a person acting under color of law to install in any private place, without consent of the person or persons entitled to privacy therein, any device for recording, amplifying, or broadcasting sounds or events in that place, or use of any such unauthorized installation, or [~~installation~~] install or use outside a private place [~~of~~] any such device to intercept sounds originating in that place which would not ordinarily be audible or comprehensible outside.
- (4) It shall not be unlawful under this part for a person acting under color of law to intercept a wire, oral, or electronic communication, when the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.
- (5) It shall not be unlawful under this part for any person to intercept a wire, oral, or electronic communication, or to disclose or use the contents of an intercepted communication, when such interception is pursuant to a valid court order under this chapter or [as] otherwise authorized by law; provided that a communications provider with knowledge of an interception of communications accomplished through the use of the communications provider's facilities shall report the fact and duration of the interception to the administrative director of the courts of this State.
- (6) Notwithstanding any other law to the contrary, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept or access wire, oral, or electronic communications, to conduct electronic surveillance, or to install a pen register or trap and trace device if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with:
 - (A) A court order directing such assistance signed by the designated judge; or
 - (B) A certification in writing from the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, the attorney general of the State of Hawaii, or the prosecuting attorney for each county that no warrant or court order is required by law, that all statutory requirements have been met, and that the specific assistance is required, setting forth the period of time during which the providing of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required.

No provider of wire or electronic communication service, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any access, interception, or surveillance or the device used to

accomplish the interception or surveillance for which the person has been furnished a court order or certification under this part, except as may otherwise be required by legal process and then only after prior notification to the party that provided the court order or certification.

No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order or certification under this part.

- (7) It shall not be unlawful under this part for any person:
 - (A) To intercept or access an electronic communication made through an electronic communication system configured so that the electronic communication is readily accessible to the general public.
 - (B) To intercept any radio communication that is transmitted:
 - (i) By any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;
 - (ii) By any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;
 - (iii) By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or
 - (iv) By any marine or aeronautical communications system.
 - (C) To engage in any conduct that:
 - (i) Is prohibited by section 633 of the Communications Act of 1934 (47 U.S.C. §553);-or
 - (ii) Is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act (47 U.S.C. §605).
 - (D) To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment to the extent necessary to identify the source of the interference[.].
 - (E) For other users of the same frequency to intercept any radio communication made through a system that uses frequencies monitored by individuals engaged in the providing or the use of the system, if the communication is not scrambled or encrypted.
- (8) It shall not be unlawful under this part:
 - (A) To use a pen register or a trap and trace device as specified in this part.
 - (B) For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from the fraudulent, unlawful, or abusive use of such service.
 - (C) For a provider of electronic or wire communication service to use a pen register or a trap and trace device for purposes relating to the operation, maintenance, and testing of the wire or

electronic communication service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service.

- (D) To use a pen register or a trap and trace device where consent of the user of the service has been obtained.
- (9) Good faith reliance upon a court order shall be a complete defense to any criminal prosecution for illegal interception, disclosure, or use.
- (10) Except as provided in this section, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than a communication to the person or entity or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of the communication or an agent of the addressee or intended recipient.
- (11) A person or entity providing electronic communication service to the public may divulge the contents of any such communication:
 - (A) As otherwise authorized by a court order or under this part;
 - (B) With the lawful consent of the originator, addressee, or intended recipient of the communication;
 - (C) To a person employed or authorized, or whose facilities are used, to forward the communication to its destination; ~~or~~
 - (D) That was inadvertently obtained by the service provider and that appears to pertain to the commission of a crime, if divulged to a law enforcement agency~~[-]; or~~
 - (E) To a law enforcement agency, public safety agency, or public safety answering point if the provider, in good faith, believes that an emergency involving danger of death or serious bodily injury to any person requires disclosure without delay of communications relating to the emergency, and is provided with a certification in writing from the governmental entity that provides the facts and circumstances establishing the existence of the emergency, that the specific disclosure is required, and sets forth the period of time during which the disclosure of the information is authorized and specifies the information required.

No cause of action shall lie in any court against any provider of electronic communication service, its officers, employees, or agents, custodian, or other specified person for disclosing information in accordance with the terms of a certification under this part."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 30, 2012.)

ACT 95

S.B. NO. 2798

A Bill for an Act Relating to Insurer Requirements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. When Congress passed the Deficit Reduction Act of 2005, P.L. 109-171, it made a number of amendments to the Social Security Act intended to strengthen states' ability to identify and collect from liable third party payors that are legally responsible to pay claims primary to medicaid.

To ensure the State's compliance with the requirements of P.L. 109-171, the legislature passed Senate Bill No. 917, Regular Session of 2009, enacted as Act 103, Session Laws of Hawaii 2009, and codified in chapter 431L, Hawaii Revised Statutes.

Federal and state statutes require that medicaid be the payor of last resort for health insurance. To meet this obligation, the department of human services, as the state medicaid agency, requires information on medicaid recipients who also have private health insurance.

Section 431L-2.5, Hawaii Revised Statutes, requires the health care insurer to share information on an individual basis at the State's request. This Act will require all private health insurers operating in Hawaii to also share with the department of human services, through an independent entity, a listing of their members on a quarterly basis. Quarterly reports will allow the department to determine on a timely basis the eligibility of persons who apply for medicaid and to verify the continuing eligibility for persons receiving health insurance through the medicaid program.

Medicaid allows passive renewal and self-declaration to facilitate eligibility, which makes it difficult for the department to determine when a recipient's eligibility status has changed because of employment, increased income, or being provided health coverage under the prepaid health care act.

In the current economic climate of decreased state revenues and the unfortunate necessity of reducing medical assistance benefits, identifying areas to decrease expenditures with minimal impact on the public becomes increasingly important. The senate committee on ways and means stated in Standing Committee Report No. 3033, Regular Session of 2010, that "the State's economic difficulties threaten the provision of human services under many state programs. Your Committee finds that, despite budget cuts and realignments, it is important to maintain the level of services that are provided to the neediest populations in the State."

The legislature finds that while it is important for the State to receive such information on a timely basis, the security and privacy of the transmitted health information must be ensured. To that end, the legislature further finds that transmitting such private information through an independent, highly secured data messaging and transmission system is necessary. Accordingly, this Act requires that any individual's information submitted by private health insurers, to ensure that state medical assistance programs are the payor of last resort, only be transmitted through a third party entity. The legislature finds the best outcome will be obtained if health insurers and the State cooperate and collaborate on this effort, thus private health insurers will participate in evaluating the qualifications of potential third entities.

The purpose of this Act is to require all private health insurers operating in Hawaii to share with the department of human services, on a timely basis, and through an independent entity, a listing of their members for the State to have accurate information on third party liability for its medical assistance recipients.

This will improve medicaid program integrity and ensure that medicaid is the payor of last resort.

SECTION 2. Section 431L-2.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§431L-2.5]~~ **Insurer requirements.** Any health insurer as identified in section 431L-1 shall:

- (1) ~~Provide, with respect to individuals who are eligible for, or are provided, medical assistance under Title 42 United States Code section 1396a (section 1902 of the Social Security Act), as amended,] upon the request of the State, information for all of its members to determine during what period the individual or the individual's spouse or dependents may be or may have been covered by a health insurer and the nature of the coverage that is or was provided by the health insurer, including the name, address, and identifying number of the plan in a manner prescribed by the State;~~
- (2) Beginning in 2014, provide to an independent, third party entity, no more than quarterly, a report listing its members. The third party entity shall match this report with one provided by the department of human services and provide the department of human services with third party liability information for medical assistance recipients. The department of human services shall determine the minimum data required to ensure the validity of matches, which may include name, date of birth, and social security number, as available. The information provided by the health insurers to the third party entity shall not be used for any purpose other than that specified in this chapter. The department of human services shall provide for representation by private health insurers in evaluating the qualifications of potential third party entities and determining the minimum data fields for matching;
- [(2)] (3) Accept the State's right of recovery and the assignment to the State of any right of an individual or other entity to payment from the party for a health care item or service for which payment has been made for medical assistance under Title 42 United States Code section 1396a (section 1902 of the Social Security Act);
- [(3)] (4) Respond to any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of the health care item or service; and
- [(4)] (5) Agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if:
 - (A) The claim is submitted by the State within the three-year period beginning on the date on which the health care item or service was furnished; and
 - (B) Any action by the State to enforce its rights with respect to the claim is commenced within six years of the State's submission of the claim.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 30, 2012.)

ACT 96

S.B. NO. 2828

A Bill for an Act Relating to the Hawaii Early Intervention Coordinating Council.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 321-353, Hawaii Revised Statutes, is amended to read as follows:

“§321-353 Hawaii early intervention coordinating council; establishment.

(a) There is established within the department for administrative purposes the Hawaii early intervention coordinating council. Members shall be appointed for three-year terms by the governor without the necessity of the advice and consent of the senate. The ~~[membership of the]~~ council shall ~~[consist of fifteen]~~ comprise twenty-five members [selected from the following:] as follows:

- (1) At least ~~[three]~~ twenty per cent of the members shall be parents of infants[;] or toddlers[;] with special needs, or children [under the age of seven] with special needs[;] aged twelve years or younger, with knowledge of, or experience with, programs for infants and toddlers with special needs; provided that at least one parent shall be a parent of an infant or toddler with special needs, or of a child with special needs aged six years or younger;
- (2) At least ~~[three]~~ twenty per cent of the members shall be public or private providers of early intervention services;
- (3) ~~[At least one representative]~~ Two members shall be from the legislature[;], of which one member shall be selected by the president of the senate and one member shall be selected by the speaker of the house of representatives;
- (4) ~~[At least one person]~~ One member shall be involved in personnel preparation;
- (5) One member shall be from the department of health program involved in the provision of, or payment for, early intervention services to infants and toddlers with special needs and their families who has sufficient authority to engage in policy planning and implementation on behalf of the program;
- (6) One member shall be from the department of health program responsible for children's mental health;
- ~~[(5)]~~ (7) ~~One member [representing]~~ shall be from the department of education[;] program responsible for preschool services to children with disabilities who has sufficient authority to engage in policy planning and implementation on behalf of the program;
- (8) One member shall be from the department of education program responsible for the coordination of education of homeless children and youths;
- ~~[(6)]~~ (9) ~~One member [representing]~~ shall be from the department of human services[;] program responsible for the state medicaid program;
- (10) One member shall be from the department of human services program responsible for child care;
- (11) One member shall be from the department of human services program responsible for foster care;

- (12) One member shall be from the department of commerce and consumer affairs program responsible for state regulation of health insurance;
- (13) One member shall be from a Head Start or Early Head Start agency or program in the State;
- ~~[(7) At least one member representing the office of the governor;] and~~
- ~~[(8)] (14) Other members [representing private or public agencies] involved in or interested in [the payment for or provision of] services to infants and toddlers with special needs and their families[-] who are selected by the governor.~~

Any vacancy on the council shall be filled in the same manner in which the original position was filled.

(b) The council shall elect its officers, and ~~[eight]~~ thirteen members shall constitute a quorum. Members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties. No member shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest. No member from an executive or administrative department under chapter 26 may serve as the chairperson of the council.

(c) The council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and be open and accessible to the general public.

(d) The council shall perform the following functions:

- (1) Advise and assist the director in the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;
- (2) Advise and assist the department in the preparation of applications and amendments thereto; ~~[and]~~
- (3) Advise and assist the department of education regarding the transition of toddlers with special needs to preschool and other appropriate services; and
- ~~[(3)]~~ (4) Prepare and submit an annual report to the governor on the status of early intervention programs for infants and toddlers with special needs and their families within the State.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved April 30, 2012.)

ACT 97

S.B. NO. 3003

A Bill for an Act Relating to Geothermal Resources.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The purpose of this Act is to address geothermal resources.

More specifically:

- (1) Part II amends chapter 182, Hawaii Revised Statutes, relating to mining leases, by differentiating between “geothermal resources exploration” and “geothermal resources development”;
- (2) Part III amends chapter 183C, Hawaii Revised Statutes, relating to the conservation district, by designating “geothermal resources exploration” and “geothermal resources development” as permissible uses in all zones of the conservation district; and
- (3) Part IV amends chapter 205, Hawaii Revised Statutes, relating to state land use districts, by repealing the geothermal resource sub-zone provisions and designating “geothermal resources exploration” and “geothermal resources development” as permissible uses in all districts.

PART II

SECTION 2. Section 182-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

“Geothermal resources development” means the development or production of electrical energy from geothermal resources and direct use application of geothermal resources. The term does not include “geothermal resources exploration”.

“Geothermal resources exploration” means either of the following:

- (1) Conducting non-invasive geophysical operations, including geochemical operations, remote sensing, and other similar techniques;
- or
- (2) Drilling exploration wells for the extraction and removal of minerals of types and quantities;

that are reasonably required for testing and analysis to provide ground truth or determine the economic viability of geothermal resources. The term does not include “geothermal resources development”.”

2. By amending the definitions of “mining lease” and “mining operations” to read:

“Mining lease” means a lease of the right to conduct mining operations, including geothermal resource exploration or development, on state lands and on lands sold or leased by the State or its predecessors in interest with a reservation of mineral rights to the State.

“Mining operations” means the process of excavation, extraction, and removal of minerals, and the exploration or development of any and all geothermal resources, from the ground, design engineering, other engineering, erection of transportation facilities and port facilities, erection of necessary plants, other necessary operations or development approved by the board preceding or connected with the actual extraction of minerals and the exploration or development of geothermal resources.”

SECTION 3. Section 182-5, Hawaii Revised Statutes, is amended to read as follows:

“§182-5 Mining leases on reserved lands. If any mineral is discovered or known to exist on reserved lands, any interested person may notify the board of land and natural resources of the person’s desire to apply for a mining lease. The notice shall be accompanied by a fee of \$100 together with a description of the land desired to be leased and the minerals involved and such information and

maps as the board may by regulation prescribe. The board may grant a mining lease on reserved lands in accordance with section 182-4, or the board may, by the vote of two-thirds of its members to which the board is entitled, without public auction, grant a mining lease on reserved lands to the occupier thereof. Such a mining lease may be granted to a person other than the occupier if the occupier has assigned the occupier's rights to apply for a mining lease to another person, in which case only such an assignee may be granted a mining lease. Any provisions to the contrary notwithstanding, if the board decides that it is appropriate to grant a geothermal mining lease on the reserved lands, the surface owner or the owner's assignee shall have the first right of refusal for a mining lease[; however, the granting of a geothermal mining lease does not create the presumption that a geothermal resource subzone will be designated, nor shall geothermal development activities occur on land within the geothermal mining lease until the area is designated a geothermal resource subzone]. If the occupier or the occupier's assignee of the right to obtain a mining lease should fail to apply for a mining lease within six months from the date of notice from the board of a finding by the board that it is in the public interest that the minerals on the reserved lands be mined, a mining lease shall be granted under section 182-4; provided that bidders at the public auction shall bid on an amount to be paid to the State for a mining lease granting to the lessee the right to exploit minerals reserved to the State."

SECTION 4. Section 182-6, Hawaii Revised Statutes, is amended to read as follows:

"§182-6 Exploration. Any person wishing to conduct exploration on [such] state lands shall apply to the board of land and natural resources who shall issue exploration permits upon [such] terms and conditions as it shall by regulation prescribe. During and as a result of the exploration, no minerals of such types and quantity beyond that reasonably required for testing and analysis shall be extracted and removed from such state lands. Upon termination of the exploration permit, the drill logs and the results of the assays resulting from the exploration shall be turned over to the board and kept confidential by the board. If the person shall not make application for a mining lease of the lands within a period of six months from the date the information is turned over to the board, the board in its discretion need not keep the information confidential.

This section shall be construed as authorizing the board to issue an exploration permit for geothermal resources as well as minerals."

PART III

SECTION 5. Section 183C-4, Hawaii Revised Statutes, is amended to read as follows:

"§183C-4 Zoning; amendments. (a) The department, after notice and hearing as provided in this section, shall review and redefine the boundaries of the zones within the conservation district.

(b) The department shall adopt rules governing the use of land within the boundaries of the conservation district that are consistent with the conservation of necessary forest growth, the conservation and development of land and natural resources adequate for present and future needs, and the conservation and preservation of open space areas for public use and enjoyment. No use except a nonconforming use as defined in section 183C-5, shall be made within the conservation district unless the use is in accordance with a zoning rule.

(c) The department may allow a temporary variance from zoned use where good cause is shown and where the proposed temporary variance is for a use determined by the department to be in accordance with good conservation practices.

(d) The department shall establish zones within the conservation district, which shall be restricted to certain uses. The department, by rules, may specify the land uses permitted therein which may include, but are not limited to, farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting pursuits, or residential use. The rules may control the extent, manner, and times of the uses, and may specifically prohibit unlimited cutting of forest growth, soil mining, or other activities detrimental to good conservation practices.

(e) Notwithstanding this section or any other law to the contrary, geothermal resources exploration and geothermal resources development, as defined under section 182-1, shall be permissible uses in all zones of the conservation district. The rules required under subsection (b) governing the use of land within the boundaries of the conservation district shall be deemed to include the provisions of this section without necessity of formal adoption by the department.

(e) (f) Whenever any landowner or government agency whose property will be directly affected makes an application to change the boundaries or land uses of any zone, or to establish a zone with certain land uses, or where the department proposes to make the change or changes itself, the change or changes shall be put in the form of a proposed rule by the applicant and the department shall then give public notice thereof during three successive weeks statewide and in the county in which the property is located. The notice shall be given not less than thirty days prior to the date set for the hearing, and shall state the time and place of the hearing and the changes proposed. Any proposed rules and the necessary maps shall be made available for inspection by interested members of the public. The hearing shall be held in the county in which the land is located and may be delegated to an agent or representative of the board as may otherwise be provided by law and in accordance with rules adopted by the board. For the purpose of its public hearing or hearings, the board may summon witnesses, administer oaths, and require the giving of testimony.”

PART IV

SECTION 6. Section 205-2, Hawaii Revised Statutes, is amended by amending subsections (b), (c), (d), and (e) to read as follows:

“(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

In addition, urban districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, as permissible uses.

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where “city-like” concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than [18,500] eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot[;]; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for

variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

In addition to the uses listed in this subsection, rural districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, as permissible uses.

- (d) Agricultural districts shall include:
 - (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
 - (2) Farming activities or uses related to animal husbandry and game and fish propagation;
 - (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
 - (4) Wind generated energy production for public, private, and commercial use;
 - (5) Biofuel production, as described in section 205-4.5(a)(15), for public, private, and commercial use;
 - (6) Solar energy facilities; provided that:
 - (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and
 - (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser;
 - (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, agricultural-energy facilities as defined in section 205-4.5(a)(16), vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a)(12);
 - (8) Wind machines and wind farms;
 - (9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
 - (10) Agricultural parks;
 - (11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; [and]
 - (12) Open area recreational facilities[-]; and
 - (13) Geothermal resources exploration and geothermal resources development, as defined under section 182-1.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept. Conservation districts shall also include areas for geothermal resources exploration and geothermal resources development, as defined under section 182-1.”

SECTION 7. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Within the agricultural district, all lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. “Farm dwelling”, as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that

are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);

- (11) Agricultural parks;
- (12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:
 - (A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;
 - (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or
 - (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;
- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
- (14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;
- (15) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that [biofuels] biofuel processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

“Appurtenances” means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of [biofuels] biofuel processing facilities.

“Biofuel processing facility” means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

- (16) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less

than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

“Agricultural activity” means any activity described in paragraphs (1) to (3) of this subsection.

“Agricultural-energy enterprise” means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

“Agricultural-energy facility” means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

“Appurtenances” means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

- (17) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, “wireless communication antenna” means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection;
- (18) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, “agricultural education programs” means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2; [øø]
- (19) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser; provided that this use shall not be permitted on lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A[-]; or
- (20) Geothermal resources exploration and geothermal resources development, as defined under section 182-1.”

SECTION 8. Section 205-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts:

- (1) Low density residential uses;
- (2) Agricultural uses;
- (3) Golf courses, golf driving ranges, and golf-related facilities; [and]

ACT 98

- (4) Public, quasi-public, and public utility facilities[-]; and
- (5) Geothermal resources exploration and geothermal resources development, as defined under section 182-1.

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2.”

SECTION 9. Section 205-5.1, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 205-5.2, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 205-5.3, Hawaii Revised Statutes, is repealed.

PART V

SECTION 12. The provisions of this Act that repeal the laws that previously authorized geothermal resources subzones under chapter 205, Hawaii Revised Statutes, shall not affect any geothermal resources producer who operates within the area of the subzone as of the effective date of this Act. The geothermal resources producer shall continue to operate in accordance with the producer’s lease with the board of land and natural resources.

SECTION 13. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved April 30, 2012.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 98

S.B. NO. 3025

A Bill for an Act Relating to Affordable Housing Credits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 46-15.1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each county shall issue affordable housing credits to the department of Hawaiian home lands with respect to existing and future Hawaiian home lands projects upon a request for such credits by the department of Hawaiian home lands. The credits shall be transferable and shall be issued on a one-unit for one-unit basis. Credits shall be issued for each single-family residence, multi-family unit, other residential unit, or if allowed under the county’s affordable housing programs, vacant lot, developed by the department of Hawaiian home lands. The credits may be applied county-wide within the same county in which the credits were earned to satisfy affordable housing obligations imposed by the county on market priced residential and non-residential developments. County-wide or project-specific requirements for the location of affordable housing units; housing class, use, or type; construction time; or other county requirements for

affordable housing units shall not impair, restrict, or condition the county's obligation to apply the credits in full satisfaction of all county requirements whether by rule, ordinance, or particular zoning conditions of a project.

For purposes of this section, "affordable housing obligation" means the requirement imposed by a county to develop vacant lots, single-family residences, multi-family residences, or any other type of residence for sale or rent to individuals within a specified income range."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval, and shall be repealed on June 30, 2015; provided that section 46-15.1(b), Hawaii Revised Statutes, shall be reenacted pursuant to section 3 of Act 141, Session Laws of Hawaii 2009.

(Approved May 2, 2012.)

ACT 99

H.B. NO. 425

A Bill for an Act Relating to Public Utilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that in trying to transition to a clean energy economy by 2030, much focus is being placed on meeting the renewable portfolio standards mandate. However, unless there are major technological breakthroughs, it is anticipated that in 2030, sixty per cent of electricity generation will come from fossil fuels. During the past year, the high cost of oil has severely impacted electricity ratepayers. Achieving a clean energy economy requires a multi-pronged approach, being aggressive in the development of renewable energy resources, promoting energy efficiency, and minimizing the use and cost of energy generated from fossil fuels.

The purpose of this Act is to direct the public utilities commission, in performing its general powers and duties, to consider the need for a diverse portfolio of fossil fuel resources and to maximize the efficiency of utility generation assets to mitigate supply disruptions and cost impacts on electricity ratepayers.

SECTION 2. Section 269-6, Hawaii Revised Statutes, is amended to read as follows:

"§269-6 General powers and duties. (a) The public utilities commission shall have the general supervision hereinafter set forth over all public utilities, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter. Included among the general powers of the commission is the authority to adopt rules pursuant to chapter 91 necessary for the purposes of this chapter.

(b) The public utilities commission shall consider the need to reduce the State's reliance on fossil fuels through energy efficiency and increased renewable energy generation in exercising its authority and duties under this chapter. In making determinations of the reasonableness of the costs of utility system capital improvements and operations, the commission shall explicitly consider, quantitatively or qualitatively, the effect of the State's reliance on fossil fuels on price volatility, export of funds for fuel imports, fuel supply reliability risk, and greenhouse gas emissions. The commission may determine that short-term costs

or direct costs that are higher than alternatives relying more heavily on fossil fuels are reasonable, considering the impacts resulting from the use of fossil fuels.

(c) In exercising its authority and duties under this chapter, the public utilities commission shall consider the costs and benefits of a diverse fossil fuel portfolio and of maximizing the efficiency of all electric utility assets to lower and stabilize the cost of electricity. Nothing in this section shall subvert the obligation of electric utilities to meet the renewable portfolio standards set forth in section 269-92.

~~[(e)]~~ (d) The chairperson of the commission may appoint a hearings officer, who shall not be subject to chapter 76, to hear and recommend decisions in any proceeding before it other than a proceeding involving the rates or any other matters covered in the tariffs filed by the public utilities. The hearings officer shall have the power to take testimony, make findings of fact and conclusions of law, and recommend a decision; provided that the findings of ~~[aet.]~~ fact, the conclusions of law, and the recommended decision shall be reviewed and may be approved by the commission after notice to the parties and an opportunity to be heard. The hearings officer shall have all of the above powers conferred upon the public utilities commission under section 269-10.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 10, 2012.)

ACT 100

H.B. NO. 1754

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 2011, the Hawaii state reapportionment commission and the redistricting commissions for the county of Hawaii and the city and county of Honolulu convened to develop new boundaries based on the last decennial census. While attempts were made, to the extent possible, to have boundaries line up with each other to avoid areas being unnecessarily divided on the basis of county council, state representative, state senator, and congressional lines, there are small population pockets that will each need to have their own unique ballot type developed. A ballot type contains the specific contests, questions, or issues that voters who reside in a specific area are entitled to vote on. Historically, each ballot type is associated with its own election day polling place.

Given the small number of voters in each of these population pockets and the financial resources and personnel required to establish and operate a polling place, the purpose of this Act is to permit the mailing of absentee ballots to all registered voters in these impacted areas, in lieu of the operation of individual polling places.

SECTION 2. Section 15-4, Hawaii Revised Statutes, is amended to read as follows:

“§15-4 Request for absentee ballot. (a) Any person registered to vote may request an absentee ballot or permanent absentee ballot in person or in writing from the clerk at any time but not later than 4:30 p.m. on the seventh day

prior to the election. Any mailed requests for an absentee ballot or permanent absentee ballot shall be mailed by the person directly to the clerk. The clerk may waive any or all of the foregoing requirements in special cases as provided in the rules adopted by the chief election officer.

The request shall include information such as the person's social security number, date of birth, and the address under which the person is registered to vote. The request shall also include the address to which the person wishes the requested ballot to be forwarded. The request, when made for any primary or special primary election, may include an additional request for an absentee ballot to be voted at any election immediately following the primary or special primary; provided the person so indicates in the person's request.

Subsequent to the closing of registration for each election, the clerk may mail a request form for an absentee ballot and permanent absentee ballot to each voter in a remote area who has not already made such a request. The request form shall be accompanied by:

- (1) A stamped, self-addressed envelope; and
- (2) Instructions regarding the manner of completing and returning the request form.

(b) Notwithstanding subsection (a), the clerk shall mail an absentee ballot for each primary, special primary, special, general, and special general election to each registered voter who resides in the county of Kalawao. The chief election officer may adopt rules to carry out this subsection.

(c) Notwithstanding any law to the contrary, in the event there are fewer than five hundred registered voters as of the preceding general election in an area covered by a unique ballot type, the clerk shall mail an absentee ballot to each registered voter who resides in such an area, if the chief election officer, or the clerk in a county only election, determines that an election day polling place will not be established for such voters.

(d) For the purposes of this section, "ballot type" means the unique ballot containing the contests, questions, or issues that will be used by the voters of a specific area.

~~[(e)]~~ (e) When a registered voter requests an absentee ballot, the voter also may include an additional request to receive absentee ballots permanently. After receiving a request for permanent absentee voter status, the clerk shall mail to the voter who requested permanent absentee voter status an absentee ballot for all subsequent elections conducted in that precinct.

~~[(f)]~~ (f) The chief election officer shall inform voters of the option of applying for permanent absentee voter status and shall provide any necessary form to request the permanent absentee ballot option to any registered voter requesting an absentee ballot and any person applying to register to vote.

~~[(e)]~~ (g) A permanent absentee voter shall be responsible for informing the clerk of any changes to personal information, including changes to the voter's forwarding address.

~~[(f)]~~ (h) A voter's permanent absentee voter status shall be terminated if any of the following conditions apply:

- (1) The voter requests in writing that such status be terminated;
- (2) The voter dies, loses voting rights, registers to vote in another jurisdiction, or is otherwise disqualified from voting;
- (3) The voter's absentee ballot, voter notification postcard, or any other election mail is returned to the clerk as undeliverable for any reason; or
- (4) The voter does not return a voter ballot by 6:00 p.m. on election day in both the primary and general election of an election year.

~~[(g)]~~ (i) If a voter's permanent absentee voter status has been terminated due to one or more of the conditions specified in subsection ~~[(f)]~~ (h), the voter shall be responsible for again requesting permanent absentee status as specified in subsection ~~[(e)]~~ (e)."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 10, 2012.)

ACT 101

S.B. NO. 112

A Bill for an Act Relating to Tourism.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that tourism is the chief generator of employment and revenue in the State and influences all sectors of the State's economy. New developments in technology, increased visitor sophistication, and greater competition from other world tourism markets require Hawaii's tourism industry to direct their marketing efforts at visitors with specific interests.

The legislature recognizes that expanding the State's tourism product by developing new niche products, such as space tourism, can enhance Hawaii's appeal as a tourist destination.

In 2007, Virgin Galactic confirmed the viability of space tourism by earning approximately \$31,000,000 in ticket revenue from over one hundred passengers. On December 15, 2008, the Federal Aviation Administration awarded a launch license for vertical and horizontal launches to the New Mexico Spaceport Authority to establish a commercial spaceport. On January 11, 2010, Cecil Field airport in Jacksonville, Florida was awarded a similar Federal Aviation Administration license.

Space tourism is a potential billion dollar global industry that could significantly increase state revenues, provide new aerospace jobs, and rejuvenate economic development in the Kalaeloa area. The Federal Aviation Administration is expected to issue a limited number of spaceport licenses and the legislature finds that it is crucial to position Hawaii for that economic opportunity.

The purpose of this Act is to appropriate funds for the application for a spaceport license from the Federal Aviation Administration.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the application for a spaceport license from the Federal Aviation Administration; provided that no funds shall be made available under this Act unless the federal government provides a dollar-for-dollar match of funds for the purpose for which this sum is appropriated.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 3. The department of business, economic development, and tourism shall submit a report on the status of the application for the spaceport license to the legislature no later than twenty days prior to the convening of the regular session of 2013.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved May 10, 2012.)

ACT 102

H.B. NO. 2013

A Bill for an Act Related to Mixed Martial Arts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 440E-1, Hawaii Revised Statutes, is amended by amending the definition of “mixed martial arts” to read as follows:

““Mixed martial arts” means unarmed combat involving the use, subject to any applicable limits set forth in this chapter and any rules adopted to implement these limits, of a combination of techniques, including grappling, kicking, and striking, from different disciplines of martial arts[, ~~including grappling, kicking, and striking~~]. For purposes of this chapter, kickboxing, pankration, muay Thai, and xtreme martial arts shall be considered “mixed martial arts”.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved May 22, 2012.)

ACT 103

S.B. NO. 2220

A Bill for an Act Relating to the Boiler and Elevator Safety Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 397, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§397- Boiler and elevator special fund; establishment; purposes. (a)

There is established in the state treasury the boiler and elevator special fund, into which shall be deposited all fees collected pursuant to section 397-5 and any appropriation from the legislature. All interest and investment moneys earned on any moneys in the special fund shall become part of the special fund.

(b) The purpose of the special fund is to provide for sufficient operating costs to carry out the purposes of this chapter. Moneys in the fund may be expended for:

- (1) Personnel and operating expenses;
- (2) Staff training and staff certification fees and expenses;
- (3) Preparation and dissemination of public information on safe installation and use of equipment regulated by this chapter;
- (4) Preparation of annual reports to the legislature as required by this chapter; and
- (5) Reimbursement to the general fund as required by this section.

(c) The director shall submit a report to the legislature on the status of the boiler and elevator special fund, including expenditures and program results, not less than twenty days prior to the convening of each regular session.

(d) No later than five years from the date of the establishment of the special fund, the director shall reimburse the general fund for the amount of any initial appropriation that was made by the general revenues of the State to the special fund.”

SECTION 2. Section 397-5, Hawaii Revised Statutes, is amended to read as follows:

"§397-5 Fees. (a) The director may prescribe reasonable fees to be charged for inspection, examination, other services rendered and for permits, certificates, or licenses, the issuance of which are required by this chapter or by any ~~[rule or regulation]~~ rules of the department ~~[promulgated]~~ adopted pursuant to this chapter, and for:

- (1) ~~[Inspection]~~ Inspections by the department of any boiler, pressure system, amusement ride, and elevator and kindred equipment for which a permit or certificate is required for its installation, operation, or use, and which is required to be inspected by this chapter or by any ~~[rule or regulation]~~ rules of the department; and
- (2) Examination of any person applying for permits, certificates, or licenses as required by this chapter or by any ~~[rule or regulation]~~ rules of the department.

(b) All fees received by the department pursuant to this section shall be paid into the ~~[general fund of the State.]~~ boiler and elevator special fund.

(c) Effective July 1, 2012, the fees for inspections, permits, and examinations of boilers, pressure systems, elevators, kindred equipment, and amusement rides shall be as prescribed by the schedules in this section; provided that the director may adopt rules pursuant to chapter 91 to amend the fees specified in this section.

SCHEDULE A: Boiler and Pressure System Fees

Installation, Repair, and Alteration Permit Fees:

- (1) Power Boilers (shall pass a hydrostatic test unless indicated otherwise):

<u>Miniature electric (no hydrostatic test required)</u>	<u>\$190</u>
<u>Less than 500 square feet of heating surface</u>	<u>\$250</u>
<u>Greater than or equal to 500 and less than or equal to 3,000 square feet of heating surface</u>	<u>\$400</u>
<u>Greater than 3,000 square feet of heating surface</u>	<u>\$750</u>
- (2) Heating boiler \$190
Retrofit \$160
- (3) Pressure vessel \$175
Retrofit \$130
- (4) Sterilizers and steam kettles \$150
Retrofit \$110
- (5) Repair application fee \$200
- (6) Alteration application fee \$500

Examination and License Fees:

- (1) Boiler inspectors certificate of competency examination fee \$300
- (2) Review of shops and facilities for the issuance of National Board or American Society of Mechanical Engineers certificate of authorization \$1,500
- (3) Review of shops and facilities for the issuance of Non-Boiler External Piping certificate of authorization \$750
- (4) Boiler inspector's Hawaii commission, initial and renewal \$75

Internal and External Inspection Fees:

- (1) Power boilers:

<u>Without manholes</u>	<u>\$150</u>
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	<u>With manholes but less than or equal to 3,000 square feet of heating surface</u>	<u>\$180</u>
	<u>With manholes greater than 3,000 and less than or equal to 10,000 square feet of heating surface</u>	<u>\$260</u>
	<u>With manholes and over 10,000 square feet of heating surface</u>	<u>\$450</u>
(2)	<u>Heating boilers:</u>	
	<u>Hot water supply</u>	<u>\$130</u>
	<u>Steam and water heating without manholes</u>	<u>\$110</u>
	<u>Steam, over 100 square feet but not over 500 square feet of heating surface</u>	<u>\$140</u>
	<u>All with manholes and steam over 500 square feet of heating surface</u>	<u>\$170</u>
(3)	<u>Pressure vessels:</u>	
	<u>Routine inspections</u>	<u>\$65</u>
	<u>Internal for air or water service</u>	<u>\$130</u>
	<u>Ultrasonic testing</u>	<u>\$130</u>
(4)	<u>For all other types of inspections an hourly fee is assessed</u>	<u>\$100</u>
(5)	<u>Hydrostatic test</u>	<u>\$300</u>
(6)	<u>School "specials" (non-code objects)</u>	<u>\$10</u>
	<u>Reports and Permit Processing Fees:</u>	
(1)	<u>Report and permit</u>	<u>\$25</u>
(2)	<u>Permit reprint</u>	<u>\$20</u>
(3)	<u>Signed permit card (old issue)</u>	<u>\$10</u>
(4)	<u>Owner portal</u>	<u>\$5</u>

SCHEDULE B: Elevator and Kindred Equipment Fees

Installation and Alteration Permits:

(1)	<u>Alteration involving only the replacement of up to two parts (such as a valve, a jack, or a cylinder)</u>	<u>\$150</u>
(2)	<u>Alteration involving only cosmetic changes (such as car interior modernizations)</u>	<u>\$300</u>
(3)	<u>Alterations of more than two parts, or components, and/or subsystems:</u>	
	<u>1 – 3 floors</u>	<u>\$600</u>
	<u>4 – 9 floors</u>	<u>\$650</u>
	<u>10 – 19 floors</u>	<u>\$700</u>
	<u>20 – 29 floors</u>	<u>\$750</u>
	<u>30 – 39 floors</u>	<u>\$800</u>
	<u>40 or more floors</u>	<u>\$900</u>
(4)	<u>Where alterations to four or more units at the same location are identical, the fee for each additional alteration permit shall be reduced by fifty per cent. The applications shall be submitted at the same time to qualify for the fee reduction.</u>	
(5)	<u>Installation of new elevators (including material lifts) and kindred equipment:</u>	
	<u>Dumbwaiter</u>	<u>\$500</u>
	<u>Escalator, moving walk, or moving ramp</u>	<u>\$500</u>
	<u>Hand elevator, manlift, or stage lift</u>	<u>\$500</u>
	<u>Wheelchair or stairway lifts</u>	<u>\$500</u>
	<u>Elevator, 1 - 3 floors</u>	<u>\$600</u>
	<u>Elevator, 4 - 9 floors</u>	<u>\$650</u>
	<u>Elevator, 10 - 19 floors</u>	<u>\$700</u>

<u>Elevator, 20 - 29 floors</u>	\$750
<u>Elevator, 30 - 39 floors</u>	\$800
<u>Elevator, 40 or more floors</u>	\$900
<u>Aerial tramways</u>	\$900
<u>Personnel hoists</u>	\$250
<u>Inclined tunnel lifts</u>	\$500
<u>(For elevators, such as observation or deep well elevators, which have considerable rise but few openings, each ten feet of vertical rise shall be considered one floor for the purpose of determining installation or alteration permit fees.)</u>	
(6) <u>Temporary use permits (construction car)</u>	\$450
(7) <u>For each valid alteration or installation permit, the department shall provide one inspection per unit.</u>	
(8) <u>The fee for each additional inspection or witnessing of tests, or both, shall be \$300 per day for up to two hours and \$600 per day for more than two hours if during the normal workday. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours.</u>	
(9) <u>Each installation or alteration permit shall be valid for up to one year from the date of issuance.</u>	

Inspection Fees:

(1) <u>Permit renewal inspection fees:</u>	
<u>Dumbwaiter</u>	\$140
<u>Escalator, moving walk, or moving ramp</u>	\$150
<u>Hand elevator, manlift, or stage lift</u>	\$150
<u>Wheelchair or stairway lifts</u>	\$150
<u>Hydraulic elevator – holed</u>	\$150
<u>Hydraulic elevator – holeless</u>	\$200
<u>Traction elevator:</u>	
<u>1 - 3 floor rise</u>	\$225
<u>4 - 9 floor rise</u>	\$250
<u>10 - 19 floor rise</u>	\$275
<u>20 - 29 floor rise</u>	\$325
<u>30 - 39 floor rise</u>	\$400
<u>40 or more floor rise</u>	\$475
<u>Aerial tramways</u>	\$400
<u>Personnel hoists</u>	\$175
<u>Inclined tunnel lifts</u>	\$220
(2) <u>Safety, load or internal test (witness fees):</u>	
<u>3-year safety test</u>	\$200
<u>5-year safety test</u>	\$300
<u>Escalator internal</u>	\$100
(3) <u>Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required to return on another day or at another time on the same day, additional fees shall be assessed at the rate of \$300 per day for up to two hours and \$600 per day for more than two hours. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours.</u>	

SCHEDULE C: Amusement Ride Fees

Inspection Fees:

(1) <u>Permit renewal inspection fees:</u>	
<u>Amusement ride</u>	\$100

- (2) Permit renewal fees are per inspection, which may constitute one day or part of the day. If the inspector has to return on another day or at another time within the same day, additional fees shall be assessed at the rate of \$300 per day for up to two hours and \$600 per day for more than two hours. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours.

SECTION 3. Section 397-8, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Civil penalties owed under this chapter shall be paid to the department and deposited into the general fund. Civil penalties owed under this chapter may be recovered in a civil action in the name of the department and the State brought in the district or circuit court for the circuit where the violation is alleged to have occurred or where the owner, user, contractor, or vendor has the owner’s, user’s, contractor’s, or vendor’s principal office.”

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2012-2013 for start up funds to be deposited to the credit of the boiler and elevator special fund.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved June 1, 2012.)

Note

1. Edited pursuant to the HRS §23G-16.5.

ACT 104

H.B. NO. 2251

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to authorize the county clerk of any county with a population of less than one hundred eighty thousand to mail an absentee ballot for each primary, special primary, special, general, and special general election to all registered voters of any island of the county that is not the county seat of government.

SECTION 2. Section 15-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding subsection (a), the respective clerk shall be allowed to conduct an absentee ballot-only election and may mail an absentee ballot for each primary, special primary, special, general, and special general election to each registered voter who resides in the county of Kalawao[-] or on any island of a county with a population of less than one hundred eighty thousand, except for the island where the county seat of government is located. The chief election officer may adopt rules to carry out this subsection.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 5, 2012.)

A Bill for an Act Relating to the Hawaii Interagency Council on Homelessness.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that homelessness is a complex and multifaceted issue requiring planning, coordination, implementation, and funding across federal, state, local, business, and community lines. Locally, many government agencies, nonprofit organizations, and other private sector organizations have worked diligently and successfully to assist homeless persons. Regardless, Hawaii has experienced an increase in the number of homeless individuals and families.

According to 2007 data, Hawaii has twice as many people who are homeless per 100,000 people than the national average. The 2011 Statewide Point-in-Time Count indicated a six per cent increase in homelessness throughout the State. Further, 2010 data indicate that almost one-third of the sheltered homeless population are children; more than ten per cent are veterans; over sixty per cent have lived in Hawaii for more than ten years; almost half of the families who are homeless include someone who is employed; and almost thirty per cent are Hawaiian or part Hawaiian. This data shows that there is no single profile of a homeless person.

In January 2011, the governor pronounced the elimination of homelessness as a “moral imperative” and appointed the first governor’s coordinator on homelessness to lead the effort to prevent and eliminate homelessness in Hawaii through the use of strategic approaches, structural changes, and unprecedented collaborative and civic involvement. On March 4, 2011, the governor hosted, with the United States Department of Veterans Affairs, an interagency leadership forum on homelessness that was attended by leaders from government, business, the community, and the faith community, to advocate for the development of a collaborative strategy to end homelessness in Hawaii.

On June 22, 2010, the United States Interagency Council on Homelessness, comprised of nineteen cabinet members, agency heads, and local and state partners in the public and private sectors, released “*Opening Doors: Federal Strategic Plan to Prevent and End Homelessness*”, the nation’s first comprehensive strategic plan to prevent and end homelessness. “*Opening Doors*” identified ambitious goals of:

- (1) Finishing the job of ending chronic homelessness in five years;
- (2) Preventing and ending homelessness among veterans in five years;
- (3) Preventing and ending homelessness for families, youth, and children in ten years; and
- (4) Setting a path to ending all types of homelessness.

The governor has found it to be imperative and in the public interest to capitalize on the opportunities and momentum generated by the United States Interagency Council on Homelessness, to provide leadership for the prevention and elimination of homelessness, and to keep Hawaii at the forefront of providing care to its residents in the spirit of the Law of the Splintered Paddle (Ke Kanawai Mamalahoe), as expressed in article IX, section 10 of the Hawaii constitution.

Consequently, on July 19, 2011, Governor Neil Abercrombie, through the issuance of Executive Order No. 11-21, pursuant to the provisions of section 26-41, Hawaii Revised Statutes, temporarily established the Hawaii interagency council on homelessness.

The purpose of this Act is to establish the Hawaii interagency council on homelessness in the Hawaii Revised Statutes, which will further enhance the ability of the council to provide solutions for ending homelessness in Hawaii. By establishing the interagency council on homelessness in the Hawaii Revised Statutes, the importance of ending homelessness will be highlighted, and continuity through future administrations will be strengthened.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . HAWAII INTERAGENCY COUNCIL ON HOMELESSNESS

§346- Hawaii interagency council on homelessness; establishment. (a) There is established the Hawaii interagency council on homelessness, which shall be an advisory body exempt from section 26-34. The Hawaii interagency council on homelessness shall be established within the department of human services for administrative purposes.

(b) The Hawaii interagency council on homelessness shall:

- (1) Serve as the statewide homelessness planning and policy development entity with broad representation from state and county government and the community;
- (2) Formulate, and advise the governor on the implementation of, a unified ten-year statewide plan to address homelessness in all Hawaii counties;
- (3) Facilitate the acquisition of funding and resources for state and county homeless programs;
- (4) Recommend policy, regulatory, and statutory changes, and identify resource strategies for the successful execution of the ten-year plan;
- (5) Assemble accurate fiscal and demographic information to support policy development and track outcomes;
- (6) Consider collaborative homelessness initiatives of other states that have demonstrated positive measurable outcomes as possible models for state and local programs;
- (7) Promote systems integration of social, health, training, and housing services to reduce duplication among homeless assistance programs;
- (8) Advise on the development and implementation of a public education program on homelessness in Hawaii and disseminate information including data and best practices; and
- (9) Report annually to the governor, the legislature, and the mayor of each county on the progress of its activities, including formulation and progress of the ten-year plan no later than twenty days prior to the convening of each regular session.

(c) The ten-year statewide plan developed by the Hawaii interagency council on homelessness shall:

- (1) Assist individuals who are homeless or facing homelessness;
- (2) Prioritize the needs of the most vulnerable individuals and families;
- (3) Encourage and promote partnerships between public and private entities to identify, renovate, and secure dignified transitional and permanent housing options;
- (4) Promote development and utilization of support services, including job training, mental health, and substance abuse treatment, that will enhance the transition out of homelessness;

- (5) Increase access to public areas for all members of the community;
- (6) Support efforts to obtain accurate statistics on homeless persons; and
- (7) Activate, coordinate, and maintain responsive action among the public, business, and faith-based communities to become part of the homelessness solution strategy.

§346- Membership. (a) The Hawaii interagency council on homelessness shall be composed of the following members or the member's designee:

- (1) Governor's coordinator on homelessness, who shall serve as chair;
- (2) Director of human services;
- (3) Administrator of the homeless programs office of the department of human services;
- (4) Director of health;
- (5) Director of labor and industrial relations;
- (6) Director of public safety;
- (7) Director of business, economic development, and tourism;
- (8) Chairperson of the Hawaiian homes commission;
- (9) Adjutant general;
- (10) Chairperson of the board of trustees of the office of Hawaiian affairs;
- (11) Attorney general;
- (12) Superintendent of education;
- (13) One member of the house of representatives to be designated by the speaker of the house of representatives;
- (14) One member of the senate to be designated by the president of the senate;
- (15) The mayor of each county;
- (16) A representative of the continuum of care programs in each county, to be designated by the respective mayors;
- (17) A representative of the United States Department of Veterans Affairs who shall be requested to serve by the governor;
- (18) A representative from the Office of Community Planning and Development, United States Department of Housing and Urban Development, who shall be requested to serve by the governor;
- (19) A representative of a faith-based organization with interfaith relationships, to be designated by the governor; and
- (20) A representative of the business community, to be designated by the governor.

(b) The non-governmental members of the Hawaii interagency council on homelessness shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(c) If a Hawaii interagency council on homelessness member is unable to attend a meeting, that member may appoint a designee to attend and to act on the member's behalf during the meeting.

(d) Chapter 84 shall not apply to the members of the Hawaii interagency council on homelessness.

§346- Meetings; quorum. (a) The Hawaii interagency council on homelessness shall meet quarterly, or more frequently as it deems necessary.

(b) A majority of the members of the Hawaii interagency council on homelessness shall constitute a quorum to do business and to validate any decision or act of the council."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2012-2013 for administrative expenses of the Hawaii interagency council on homelessness.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 4. (a) The department of human services, in conjunction with and with the advisement of the Hawaii interagency council on homelessness, shall conduct a study on designating safe facilities located at camping areas or partially open or closed buildings that provide at least clean eating areas, showers, toilets, laundry facilities, and locker rooms in various locations throughout the State for homeless persons for overnight stays. The study shall consider the following:

- (1) Establishing a minimum fee for use of the designated safe facility; provided that any fee collected shall be used to offset expenses associated with the establishment and maintenance of the designated safe facilities;
- (2) Establishing rules and a code of conduct for individuals, couples, and families for overnight stays in a designated safe facility;
- (3) Authorizing the department of human services to take appropriate action should a homeless individual, couple, or family not comply with the rules or participate in any illegal activity while in a designated safe facility;
- (4) Coordinating with state and county law enforcement officials to establish minimum security for the safety of individuals using the designated safe facilities;
- (5) Establishing partnerships between the department of human services and community and nonprofit organizations in good standing with the State to provide voluntary support services for homeless persons who use the designated safe facilities;
- (6) Allowing users of a designated safe facility to enter the facility at sundown; provided that amenities provided at the designated safe facility may be used during daylight hours;
- (7) Stipulating that persons not using the amenities be prohibited from the premises and requiring them to vacate the premises by eight in the morning to allow maintenance of the facility;
- (8) Establishing a no loitering policy for daylight hours; and
- (9) Identifying rules to be adopted pursuant to chapter 91, Hawaii Revised Statutes, necessary for the implementation of designated safe facilities.

(b) The department of human services, in conjunction with and with the advisement of the Hawaii interagency council on homelessness, shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2013 on its findings and on the progress of the establishment of designated safe facilities in various locations throughout the State for homeless persons for overnight stays pursuant to this Act.

SECTION 5. If any provision of this Act is found to be in conflict with a federal requirement, the federal requirement shall prevail and the provision shall be deemed to be amended to conform to the federal requirement.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved June 8, 2012.)

A Bill for an Act Relating to the State Budget.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act shall be known and may be cited as the Supplemental Appropriations Act of 2012.

SECTION 2. This Act amends Act 164, Session Laws of Hawaii 2011, and other appropriations and authorizations effective during fiscal biennium 2011-2013.

SECTION 3. Part II, Act 164, Session Laws of Hawaii 2011, is amended by amending section 3 to read as follows:

“SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 2011 and ending June 30, 2013. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each fiscal year, except as provided elsewhere in this Act, or as provided by general law.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
				M O F	M O F
A. ECONOMIC DEVELOPMENT					
1.	BED100 -	STRATEGIC MARKETING & SUPPORT			
	OPERATING		BED	12.00 * 1,197,828 A	10.00 * 935,043 A
			BED	B	B
			BED	148,718 N	148,718 N
			BED	250,000 V	V
			BED	1,821,915 W	1,821,915 W
2.	BED105 -	CREATIVE INDUSTRIES ¹			
	OPERATING		BED	8.00 * 813,704 A	11.00 * 979,345 A
	INVESTMENT CAPITAL		BED	C	1,725,000 C
3.	BED107 -	FOREIGN TRADE ZONE			
	OPERATING		BED	17.00 * 2,066,145 B	17.00 * 2,023,354 B
	INVESTMENT CAPITAL		BED	4,500,000 D	D
			BED	3,000,000 N	N
4.	BED142 -	GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT			
	OPERATING		BED	21.00 * 1,536,061 A	23.00 * 1,594,854 A
	INVESTMENT CAPITAL		BED	C	2,200,000 C
5.	BED113 -	TOURISM			
	OPERATING		BED	6.00 * 141,162,298 B	6.00 * 141,073,635 B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
6.	AGR101	FINANCIAL ASSISTANCE FOR AGRICULTURE			
	OPERATING		AGR	9.00 * 1,089,967 B	9.00 * 1,064,967 B
			AGR	5,000,000 W	5,000,000 W
7.	AGR122	PLANT, PEST, AND DISEASE CONTROL			
	OPERATING		AGR	50.00 * 3,341,420 A	79.00 * 4,599,153 A
			AGR	62.00 * 10,515,874 B	42.00 * 8,590,889 B
			AGR	753,383 N	733,051 N
			AGR	512,962 T	512,854 T
				9.00 *	9.00 *
			AGR	1,029,791 U	986,938 U
			AGR	50,360 W	50,360 W
	INVESTMENT CAPITAL		AGR	C	2,000,000 C
8.	AGR131	RABIES QUARANTINE			
	OPERATING		AGR	36.32 * 3,281,623 B	36.32 * 3,209,123 B
9.	AGR132	ANIMAL DISEASE CONTROL			
	OPERATING		AGR	13.68 * 971,700 A	13.68 * 947,200 A
			AGR	377,518 N	377,518 N
			AGR	473,224 U	473,224 U
10.	LNR172	FORESTRY RESOURCE MANAGEMENT AND DEVELOPMENT			
	OPERATING		LNR	15.00 * 553,023 A	15.00 * 534,780 A
			LNR	1.50 * 3,909,996 B	2.50 * 3,614,783 B
			LNR	1.50 * 992,847 N	1.50 * 989,990 N
11.	AGR151	QUALITY AND PRICE ASSURANCE			
	OPERATING		AGR	16.00 * 1,093,246 A	16.00 * 1,067,746 A
			AGR	1.00 * 204,885 B	3.00 * 372,738 B
			AGR	77,424 N	77,424 N
			AGR	300,000 T	300,000 T
			AGR	570,353 W	489,559 W
12.	AGR171	AGRICULTURAL DEVELOPMENT AND MARKETING			
	OPERATING		AGR	12.00 * 995,183 A	12.00 * 972,683 A
			AGR	20,000 B	20,000 B
			AGR	184,500 N	184,500 N
13.	AGR141	AGRICULTURAL RESOURCE MANAGEMENT			
	OPERATING		AGR	1.00 * 543,814 A	1.00 * 89,399 A
			AGR	9.00 * 1,925,210 B	23.50 * 2,041,000 B
			AGR	13.00 * 1,488,383 W	7.50 * 1,101,416 W
	INVESTMENT CAPITAL		AGR	12,710,000 C	22,015,000 C
			AGR	7,050,000 N	9,350,000 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
14.	AGR161 - AGRIBUSINESS DEVELOPMENT AND RESEARCH				
	OPERATING		AGR	50,601 A	50,601 A
			AGR	500,000 B	500,000 B
			AGR	3,452,371 W	3,372,691 W
	INVESTMENT CAPITAL		AGR	750,000 C	4,350,000 C
15.	AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE			20.00 *	20.00 *
	OPERATING		AGR	1,448,696 A	1,407,196 A
			AGR	4.00 *	4.00 *
	INVESTMENT CAPITAL		AGR	272,350 B	272,350 B
			AGR	750,000 C	500,000 C
16.	LNR153 - COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT			6.00 *	7.00 *
	OPERATING		LNR	581,020 A	548,769 A
				*	1.00 *
			LNR	303,474 B	302,235 B
				1.00 *	3.00 *
	INVESTMENT CAPITAL		LNR	750,305 N	746,632 N
			LNR	50,000 C	320,000 C
17.	AGR153 - AQUACULTURE DEVELOPMENT PROGRAM			4.00 *	4.00 *
	OPERATING		AGR	310,405 A	303,905 A
			AGR	60,000 B	60,000 B
			AGR	46,134 N	46,134 N
18.	BED120 - PROGRAM ON ENVIRONMENT AND ENERGY DEVELOPMENT			3.00 *	0.00 *
	OPERATING		BED	305,176 A	0 A
				5.00 *	5.00 *
			BED	4,085,300 B	3,822,842 B
				5.00 *	0.00 *
			BED	4,952,266 N	4,673,394 N
			BED	4,659,324 V	1,483,282 V
19.	BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION			1.50 *	1.50 *
	OPERATING		BED	1,049,658 A	1,038,016 A
				1.50 *	1.50 *
			BED	3,755,410 B	3,736,746 B
			BED	5,521,710 N	5,491,482 N
			BED	1,500,000 W	1,500,000 W
	INVESTMENT CAPITAL		BED	734,000 B	B
			BED	C	3,000,000 C
20.	BED145 - HAWAII STRATEGIC DEVELOPMENT CORPORATION				
	OPERATING		BED	2,608,516 B	2,608,516 B
			BED	4,218,756 W	4,284,672 W
21.	BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY				
	OPERATING		BED	7,672,917 B	7,615,034 B
			BED	9,926,408 N	9,894,248 N
	INVESTMENT CAPITAL		BED	3,500,000 C	1,800,000 C
			BED	D	1,000,000 D

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
22.	LNR141 - WATER AND LAND DEVELOPMENT				
	OPERATING		LNR	2.00 * 250,828 A	1.50 * 196,898 A
			LNR	2.00 * 325,168 B	4.00 * 606,041 B
			LNR	188,181 W	185,338 W
	INVESTMENT CAPITAL		LNR	3,740,000 C	4,000,000 C
23.	BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY				
	OPERATING		BED	2.00 * 1,086,818 W	2.00 * 1,072,019 W
	INVESTMENT CAPITAL		BED	1,855,000 C	9,156,000 C
24.	BED160 - HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION				
	OPERATING		BED	9,677,735 N	9,677,735 N
			BED	21,923,698 T	21,923,698 T
				31.00 * 6,874,086 W	31.00 * 6,699,612 W
	INVESTMENT CAPITAL		BED	43,000,000 C	5,000,000 C
25.	BED128 - OFFICE OF AEROSPACE				
	OPERATING		BED	78,984 A	157,847 A
	INVESTMENT CAPITAL		BED	C	1,840,000 C

B. EMPLOYMENT

1.	LBR111 - WORKFORCE DEVELOPMENT PROGRAM				
	OPERATING		LBR	0.20 * 101,259 A	0.20 * 100,783 A
			LBR	5,940,010 B	5,938,654 B
				116.80 * 50,768,891 N	116.80 * 50,062,557 N
			LBR	1,505,580 U	1,493,319 U
2.	LBR135 - WORKFORCE DEVELOPMENT COUNCIL				
	OPERATING		LBR	1.00 * 11,577 A	0.10 * 11,303 A
				*	0.90 *
			LBR	492,261 N	579,974 N
3.	LBR171 - UNEMPLOYMENT INSURANCE PROGRAM				
	OPERATING		LBR	623,391,310 B	361,168,457 B
				243.50 * 18,152,181 N	255.50 * 17,695,372 N
4.	LBR903 - OFFICE OF COMMUNITY SERVICES				
	OPERATING		LBR	2.00 * 1,841,633 A	2.00 * 1,834,684 A
				2.00 * 5,882,044 N	2.00 * 5,844,542 N
			LBR	1,200,000 U	1,200,000 U
	INVESTMENT CAPITAL		LBR	8,310,000 C	9,145,000 C
5.	LBR905 - HI CAREER (KOKUA) INFORMATION DELIVERY SYS				
	OPERATING		LBR	204,513 A	198,751 A
			LBR	143,372 N	73,994 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
6.		HMS802 - VOCATIONAL REHABILITATION			
	OPERATING		HMS	23.41 * 3,516,863 A 81.09 *	23.63 * 3,957,234 A 81.87 *
			HMS	13,440,880 N	13,797,986 N
			HMS	1,330,200 W	1,330,200 W
	INVESTMENT CAPITAL		HMS	497,000 C	1,178,000 C
7.		LBR143 - HAWAII OCCUPATIONAL SAFETY AND HEALTH PROGRAM			
	OPERATING		LBR	26.50 * 1,498,757 A *	14.50 * 799,247 A 22.00 *
			LBR	B	1,867,932 B
			LBR	16.50 *	16.50 *
			LBR	1,830,524 N	1,765,447 N
			LBR	70,000 W	70,000 W
8.		LBR152 - WAGE STANDARDS PROGRAM			
	OPERATING		LBR	18.00 * 1,051,219 A	18.00 * 1,018,056 A
9.		LBR153 - HAWAII CIVIL RIGHTS COMMISSION			
	OPERATING		LBR	17.50 * 1,111,480 A 4.50 *	17.50 * 1,077,431 A 4.50 *
			LBR	600,287 N	623,510 N
10.		LBR183 - DISABILITY COMPENSATION PROGRAM			
	OPERATING		LBR	81.00 * 4,237,423 A 8.00 *	74.00 * 4,105,537 A 8.00 *
			LBR	23,791,406 B	23,774,182 B
11.		LBR316 - OFFICE OF LANGUAGE ACCESS			
	OPERATING		LBR	3.00 * 312,228 A	3.00 * 306,937 A
12.		LBR161 - HAWAII LABOR RELATIONS BOARD			
	OPERATING		LBR	1.00 * 568,548 A	1.00 * 551,327 A
13.		LBR812 - LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD			
	OPERATING		LBR	9.00 * 782,657 A	9.00 * 759,313 A
14.		LBR871 - EMPLOYMENT SECURITY APPEALS REFEREES' OFFICE			
	OPERATING		LBR	10.80 * 809,372 N	12.00 * 854,870 N
15.		LBR901 - DATA GATHERING, RESEARCH, AND ANALYSIS			
	OPERATING		LBR	4.38 * 303,933 A 27.62 *	4.38 * 294,150 A 27.62 *
			LBR	2,418,373 N	2,310,003 N
16.		LBR902 - GENERAL ADMINISTRATION			
	OPERATING		LBR	19.52 * 1,247,936 A 27.06 *	19.52 * 1,212,641 A 28.48 *
			LBR	2,763,168 N	2,838,676 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
C. TRANSPORTATION FACILITIES					
1.	TRN102 - HONOLULU INTERNATIONAL AIRPORT			586.50 *	586.50 *
	OPERATING		TRN	116,915,768 B	132,369,942 B
			TRN	1,000,000 N	1,000,000 N
	INVESTMENT CAPITAL		TRN	20,287,000 E	378,421,000 E
			TRN	40,725,000 N	55,302,000 N
			TRN	6,400,000 X	16,000,000 X
2.	TRN104 - GENERAL AVIATION			30.00 *	30.00 *
	OPERATING		TRN	5,946,642 B	5,840,748 B
			TRN	330,000 N	N
	INVESTMENT CAPITAL		TRN	2,375,000 B	775,000 B
			TRN	E	500,000 E
			TRN	7,750,000 N	7,750,000 N
3.	TRN111 - HILO INTERNATIONAL AIRPORT			82.00 *	82.00 *
	OPERATING		TRN	13,435,989 B	13,245,952 B
			TRN	2,375,000 N	1,000,000 N
	INVESTMENT CAPITAL		TRN	2,500,000 B	B
			TRN	14,000,000 E	900,000 E
			TRN	N	8,550,000 N
4.	TRN114 - KONA INTERNATIONAL AIRPORT AT KE'AHOLE			85.00 *	85.00 *
	OPERATING		TRN	15,506,905 B	15,327,878 B
			TRN	475,000 N	1,000,000 N
	INVESTMENT CAPITAL		TRN	E	10,400,000 E
5.	TRN116 - WAIMEA-KOHALA AIRPORT			6.00 *	6.00 *
	OPERATING		TRN	873,712 B	859,757 B
			TRN	283,000 N	500,000 N
6.	TRN118 - UPOLU AIRPORT				
	OPERATING		TRN	239,500 B	239,500 B
			TRN	249,000 N	500,000 N
7.	TRN131 - KAHULUI AIRPORT			151.00 *	162.00 *
	OPERATING		TRN	23,636,119 B	23,845,871 B
			TRN	1,000,000 N	1,000,000 N
	INVESTMENT CAPITAL		TRN	1,500,000 B	20,000,000 B
			TRN	18,995,000 E	190,715,000 E
			TRN	11,625,000 N	3,750,000 N
			TRN	X	50,000,000 X
8.	TRN133 - HANA AIRPORT			9.00 *	9.00 *
	OPERATING		TRN	696,912 B	694,441 B
			TRN	373,500 N	N
	INVESTMENT CAPITAL		TRN	E	19,000,000 E
9.	TRN135 - KAPALUA AIRPORT			11.00 *	11.00 *
	OPERATING		TRN	1,846,635 B	1,819,016 B
	INVESTMENT CAPITAL		TRN	E	113,000 E

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
10.	TRN141 - MOLOKAI AIRPORT				
	OPERATING		TRN	13.00 * 2,262,129 B	13.00 * 2,226,735 B
	INVESTMENT CAPITAL		TRN	3,325,000 N	1,000,000 N
			TRN	E	150,000 E
11.	TRN143 - KALAUPAPA AIRPORT				
	OPERATING		TRN	9.00 * 780,691 B	9.00 * 727,784 B
			TRN	350,000 N	N
12.	TRN151 - LANAI AIRPORT				
	OPERATING		TRN	10.00 * 1,982,364 B	10.00 * 2,435,765 B
	INVESTMENT CAPITAL		TRN	950,000 N	1,000,000 N
			TRN	2,825,000 B	B
			TRN	32,286,000 N	N
13.	TRN161 - LIHUE AIRPORT				
	OPERATING		TRN	101.00 * 14,751,779 B	101.00 * 16,568,979 B
	INVESTMENT CAPITAL		TRN	475,000 N	1,000,000 N
			TRN	5,700,000 E	9,380,000 E
			TRN	N	20,520,000 N
14.	TRN163 - PORT ALLEN AIRPORT				
	OPERATING		TRN	19,841 B	26,841 B
			TRN	340,000 N	N
15.	TRN195 - AIRPORTS ADMINISTRATION				
	OPERATING		TRN	111.00 * 124,510,416 B	111.00 * 197,834,815 B
	INVESTMENT CAPITAL		TRN	N	300,000 N
			TRN	11,450,000 B	13,350,000 B
			TRN	E	601,000,000 E
			TRN	7,500,000 N	7,500,000 N
			TRN	100,000 X	78,699,000 X
16.	TRN301 - HONOLULU HARBOR				
	OPERATING		TRN	116.00 * 24,115,612 B	116.00 * 23,853,022 B
	INVESTMENT CAPITAL		TRN	E	50,000,000 E
17.	TRN303 - KALAELOA BARBERS POINT HARBOR				
	OPERATING		TRN	3.00 * 2,104,534 B	3.00 * 2,097,677 B
	INVESTMENT CAPITAL		TRN	E	27,150,000 E
18.	TRN311 - HILO HARBOR				
	OPERATING		TRN	14.00 * 2,375,457 B	14.00 * 2,353,966 B
	INVESTMENT CAPITAL		TRN	750,000 B	10,000,000 B
			TRN	E	51,000,000 E
			TRN	N	1,000 N
19.	TRN313 - KAWAIHAE HARBOR				
	OPERATING		TRN	2.00 * 1,234,031 B	2.00 * 1,229,503 B
	INVESTMENT CAPITAL		TRN	E	11,500,000 E
			TRN	N	1,000 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
20.	TRN331 - KAHULUI HARBOR				
	OPERATING		TRN	18.00 *	18.00 *
	INVESTMENT CAPITAL		TRN	3,427,632 B	3,384,033 B
			TRN	B	3,000,000 B
			TRN	48,400,000 E	17,000,000 E
21.	TRN341 - KAUNAKAKAI HARBOR				
	OPERATING		TRN	1.00 *	1.00 *
				606,144 B	603,066 B
22.	TRN361 - NAWILIWILI HARBOR				
	OPERATING		TRN	15.00 *	15.00 *
				2,807,157 B	2,773,435 B
23.	TRN363 - PORT ALLEN HARBOR				
	OPERATING		TRN	1.00 *	1.00 *
				393,619 B	391,089 B
24.	TRN351 - KAUMALAPAU HARBOR				
	OPERATING		TRN	259,837 B	259,837 B
25.	TRN395 - HARBORS ADMINISTRATION				
	OPERATING		TRN	71.00 *	71.00 *
	INVESTMENT CAPITAL		TRN	53,223,480 B	53,070,043 B
			TRN	7,502,000 B	18,500,000 B
			TRN	9,235,000 E	6,735,000 E
			TRN	4,003,000 N	3,000 N
26.	TRN333 - HANA HARBOR				
	OPERATING		TRN	42,519 B	42,519 B
27.	TRN501 - OAHU HIGHWAYS				
	OPERATING		TRN	225.00 *	224.00 *
			TRN	82,971,062 B	100,158,216 B
	INVESTMENT CAPITAL		TRN	2,200,000 N	3,100,000 N
			TRN	24,543,000 E	35,249,000 E
			TRN	45,947,000 N	72,814,000 N
			TRN	R	1,000,000 R
28.	TRN511 - HAWAII HIGHWAYS				
	OPERATING		TRN	124.00 *	124.00 *
	INVESTMENT CAPITAL		TRN	22,557,598 B	29,783,139 B
			TRN	12,195,000 E	9,990,000 E
			TRN	22,380,000 N	24,880,000 N
29.	TRN531 - MAUI HIGHWAYS				
	OPERATING		TRN	81.00 *	81.00 *
	INVESTMENT CAPITAL		TRN	22,588,385 B	31,046,476 B
			TRN	24,292,000 E	7,240,000 E
			TRN	19,720,000 N	8,260,000 N
			TRN	1,500,000 S	S
30.	TRN561 - KAUAI HIGHWAYS				
	OPERATING		TRN	51.00 *	51.00 *
	INVESTMENT CAPITAL		TRN	13,283,171 B	18,416,623 B
			TRN	23,510,000 E	19,410,000 E
			TRN	23,120,000 N	15,160,000 N
			TRN	4,500,000 S	S

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M	FISCAL M
				YEAR O	YEAR O
				2011-2012 F	2012-2013 F
31.	TRN595 - HIGHWAYS ADMINISTRATION				
	OPERATING	TRN	83.00 *		84.00 *
		TRN	79,904,352 B		84,485,657 B
	INVESTMENT CAPITAL	TRN	1,757,957 N		4,155,423 N
		TRN	12,000,000 B		12,000,000 B
		TRN	20,410,000 E		25,585,000 E
		TRN	17,740,000 N		38,160,000 N
32.	TRN597 - HIGHWAY SAFETY				
	OPERATING	TRN	33.00 *		33.00 *
		TRN	6,847,705 B		6,775,074 B
			7.00 *		7.00 *
		TRN	5,945,280 N		5,924,840 N
33.	TRN995 - GENERAL ADMINISTRATION				
	OPERATING	TRN	104.00 *		104.00 *
		TRN	14,946,700 B		14,833,618 B
		TRN	33,322,783 N		33,319,866 N
		TRN	423,067 R		423,067 R
33A.	TRN695 - ALOHA TOWER DEVELOPMENT CORPORATION				
	OPERATING	TRN	B		1,725,000 B

D. ENVIRONMENTAL PROTECTION

1. HTH840 - ENVIRONMENTAL MANAGEMENT

OPERATING	HTH	36.00 *	36.00 *
		2,604,474 A	2,522,059 A
		60.00 *	60.00 *
		80,627,387 B	80,446,444 B
		44.80 *	46.80 *
		9,167,057 N	9,241,708 N
		*	2.00 *
		U	174,454 U
		56.20 *	56.20 *
		164,949,186 W	164,799,873 W
INVESTMENT CAPITAL	HTH	5,872,000 C	5,872,000 C
	HTH	29,354,000 N	29,354,000 N

2. AGR846 - PESTICIDES

OPERATING	AGR	8.00 *	8.00 *
		496,810 A	483,310 A
		2.00 *	2.00 *
		475,561 N	475,561 N
	AGR	8.00 *	8.00 *
	AGR	1,101,976 W	1,072,439 W

3. LNR401 - AQUATIC RESOURCES

OPERATING	LNR	27.00 *	29.25 *
		2,384,172 A	2,197,469 A
		1.00 *	1.75 *
INVESTMENT CAPITAL	LNR	3,478,709 N	3,453,492 N
	LNR	1,000,000 C	1,500,000 C

4. LNR402 - NATIVE RESOURCES AND FIRE PROTECTION PROGRAM

OPERATING	LNR	49.50 *	49.50 *
		3,722,025 A	3,629,840 A
		3,470,749 B	3,405,525 B
		6.50 *	10.50 *
	LNR	5,151,190 N	5,196,726 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
			LNR	T	136,197 T
			LNR	U	800,000 U
		INVESTMENT CAPITAL	LNR	1,180,000 C	2,500,000 C
5.	LNR404 -	WATER RESOURCES			
				19.00 *	19.00 *
	OPERATING		LNR	2,335,185 A	2,225,795 A
				3.00 *	3.00 *
			LNR	426,818 B	479,749 B
6.	LNR405 -	CONSERVATION AND RESOURCES ENFORCEMENT			
				114.25 *	114.25 *
	OPERATING		LNR	6,644,604 A	7,186,522 A
				18.00 *	18.00 *
			LNR	1,626,083 B	1,583,055 B
				1.75 *	1.75 *
			LNR	768,114 N	761,973 N
				1.00 *	1.00 *
	INVESTMENT CAPITAL		LNR	108,114 W	106,481 W
			LNR	280,000 C	120,000 C
7.	LNR407 -	NATURAL AREA RESERVES AND WATERSHED MANAGEMENT			
				19.00 *	19.00 *
	OPERATING		LNR	812,151 A	735,709 A
				5.50 *	10.50 *
			LNR	7,660,731 B	9,620,788 B
				0.50 *	0.50 *
	INVESTMENT CAPITAL		LNR	1,638,030 N	1,637,269 N
			LNR	C	3,555,000 C
8.	HTH850 -	OFFICE OF ENVIRONMENTAL QUALITY CONTROL			
				5.00 *	5.00 *
	OPERATING		HTH	344,488 A	337,190 A
9.	LNR906 -	LNR - NATURAL AND PHYSICAL ENVIRONMENT			
				31.00 *	31.00 *
	OPERATING		LNR	2,340,578 A	1,804,551 A
				11.00 *	12.00 *
	INVESTMENT CAPITAL		LNR	986,801 B	1,368,713 B
			LNR	10,340,000 C	3,597,000 C
10.	HTH849 -	ENVIRONMENTAL HEALTH ADMINISTRATION			
				10.00 *	10.00 *
	OPERATING		HTH	893,616 A	871,517 A
				0.50 *	0.50 *
			HTH	48,271 B	48,271 B
				14.50 *	13.50 *
			HTH	3,201,314 N	2,940,906 N
				14.00 *	16.00 *
			HTH	3,315,298 W	3,396,488 W

E. HEALTH

1. HTH100 - COMMUNICABLE DISEASE SERVICES

				99.00 *	99.00 *
	OPERATING		HTH	13,388,725 A	12,618,433 A
				16.50 *	16.00 *
	INVESTMENT CAPITAL		HTH	8,407,452 N	8,281,674 N
			AGS	C	930,000 C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
2.	HTH131	- DISEASE OUTBREAK CONTROL			
	OPERATING		HTH	20.60 *	20.60 *
			HTH	1,613,768 A	1,578,391 A
			HTH	34.40 *	31.40 *
			HTH	10,473,680 N	9,805,033 N
3.	HTH141	- GENERAL MEDICAL AND PREVENTIVE SERVICES			
	OPERATING		HTH	166.87 *	164.87 *
			HTH	12,480,474 A	12,299,051 A
			HTH	90,720 B	90,720 B
			HTH	131,746 U	131,746 U
4.	HTH730	- EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM			
	OPERATING		HTH	13.00 *	13.00 *
			HTH	56,691,251 A	55,864,040 A
			HTH	20,072,874 B	20,063,956 B
			HTH	3.00 *	3.00 *
			HTH	3,807,055 N	3,803,480 N
5.	HTH560	- FAMILY HEALTH SERVICES ²			
	OPERATING		HTH	108.00 *	108.00 *
			HTH	23,985,044 A	23,785,948 A
			HTH	13.50 *	13.50 *
			HTH	13,955,451 B	14,175,350 B
			HTH	181.50 *	181.50 *
			HTH	49,038,560 N	53,236,422 N
			HTH	0.50 *	0.50 *
			HTH	1,868,031 U	1,864,562 U
6.	HTH590	- TOBACCO SETTLEMENT			
	OPERATING		HTH	1.00 *	0.00 *
			HTH	64,114 A	0 A
			HTH	38.00 *	39.00 *
			HTH	50,319,643 B	50,210,366 B
			HTH	11.00 *	11.00 *
			HTH	4,833,514 N	5,261,085 N
			HTH	4,673,541 U	1,586,451 U
7.	HTH595	- HEALTH RESOURCES ADMINISTRATION			
	OPERATING		HTH	2.00 *	2.00 *
	INVESTMENT CAPITAL		HTH	150,379 A	150,379 A
			HTH	6,000,000 C	4,635,000 C
8.	HTH210	- HAWAII HEALTH SYSTEMS CORPORATION - CORPORATE OFFICE			
	OPERATING		HTH	54.50 *	54.50 *
	INVESTMENT CAPITAL		HTH	12,509,280 B	12,509,280 B
			HTH	1,340,000 C	C
9.	HTH211	- KAHUKU HOSPITAL			
	OPERATING		HTH	1,500,000 A	1,500,000 A
10.	HTH212	- HAWAII HEALTH SYSTEMS CORPORATION - REGIONS			
	OPERATING		HTH	82,140,000 A	82,140,000 A
			HTH	2,780.75 *	2,780.75 *
	INVESTMENT CAPITAL		HTH	508,583,900 B	508,583,900 B
			HTH	25,000,000 C	35,000,000 C
11.	HTH213	- ALII COMMUNITY CARE			
	OPERATING		HTH	1,500,000 B	1,500,000 B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
12.	HTH420 - ADULT MENTAL HEALTH - OUTPATIENT			145.50 *	145.50 *
	OPERATING		HTH	74,000,162 A	72,255,141 A
			HTH	11,670,500 B	11,610,000 B
			HTH	1,632,230 N	1,632,230 N
13.	HTH430 - ADULT MENTAL HEALTH - INPATIENT			615.00 *	615.00 *
	OPERATING		HTH	52,895,657 A	51,617,843 A
	INVESTMENT CAPITAL		AGS	11,614,000 C	2,800,000 C
14.	HTH440 - ALCOHOL AND DRUG ABUSE			22.00 *	22.00 *
	OPERATING		HTH	18,375,362 A	18,533,930 A
			HTH	300,000 B	500,000 B
				6.00 *	6.00 *
			HTH	13,609,867 N	13,826,731 N
15.	HTH460 - CHILD AND ADOLESCENT MENTAL HEALTH			168.50 *	168.50 *
	OPERATING		HTH	40,811,045 A	40,012,731 A
				17.00 *	17.00 *
			HTH	15,033,910 B	14,930,963 B
			HTH	4,439,309 N	4,382,719 N
			HTH	2,264,888 U	2,258,470 U
16.	HTH501 - DEVELOPMENTAL DISABILITIES			191.75 *	191.75 *
	OPERATING		HTH	68,439,167 A	66,884,576 A
				3.00 *	3.00 *
			HTH	1,038,992 B	1,038,992 B
17.	HTH495 - BEHAVIORAL HEALTH ADMINISTRATION			57.50 *	57.50 *
	OPERATING		HTH	6,882,191 A	6,690,791 A
			HTH	3,557,363 N	3,510,962 N
18.	HTH610 - ENVIRONMENTAL HEALTH SERVICES			98.00 *	96.00 *
	OPERATING		HTH	5,652,031 A	5,364,482 A
				13.00 *	13.00 *
			HTH	1,376,633 B	1,389,351 B
				6.00 *	6.00 *
			HTH	594,682 N	577,269 N
				1.00 *	1.00 *
			HTH	55,481 U	53,031 U
19.	HTH710 - STATE LABORATORY SERVICES			72.00 *	72.00 *
	OPERATING		HTH	6,080,558 A	5,941,588 A
			HTH	497,363 N	486,234 N
20.	HTH720 - HEALTH CARE ASSURANCE			20.90 *	20.90 *
	OPERATING		HTH	1,508,133 A	1,457,829 A
			HTH	406,000 B	406,000 B
				19.90 *	19.90 *
			HTH	1,659,515 N	1,586,387 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
21.	HTH906 - STATE HEALTH PLANNING AND DEVELOPMENT AGENCY			8.00 *	8.00 *
	OPERATING		HTH	508,814 A	493,600 A
			HTH	114,000 B	114,000 B
22.	HTH760 - HEALTH STATUS MONITORING			29.50 *	29.50 *
	OPERATING		HTH	1,382,629 A	1,364,867 A
			HTH	587,271 B	583,608 B
				4.00 *	4.00 *
			HTH	264,516 N	217,543 N
23.	HTH905 - DEVELOPMENTAL DISABILITIES COUNCIL			1.50 *	1.50 *
	OPERATING		HTH	218,048 A	214,722 A
				6.50 *	6.50 *
			HTH	478,797 N	462,664 N
24.	HTH907 - GENERAL ADMINISTRATION			118.50 *	118.50 *
	OPERATING		HTH	8,027,259 A	7,822,348 A
			HTH	1,051,850 N	2,081,349 N
	INVESTMENT CAPITAL		AGS	13,510,000 C	13,649,000 C

F. SOCIAL SERVICES

1.	HMS301 - CHILD PROTECTIVE SERVICES			222.88 *	221.96 *
	OPERATING		HMS	21,497,187 A	32,145,186 A
			HMS	617,587 B	1,007,587 B
				202.62 *	198.54 *
			HMS	38,685,170 N	38,146,283 N
2.	HMS302 - GENERAL SUPPORT FOR CHILD CARE			21.07 *	22.07 *
	OPERATING		HMS	996,913 A	1,000,334 A
				14.93 *	16.93 *
			HMS	10,945,263 N	10,962,692 N
3.	HMS303 - CHILD PROTECTIVE SERVICES PAYMENTS				
	OPERATING		HMS	41,816,013 A	36,816,013 A
			HMS	20,095,666 N	20,095,666 N
4.	HMS305 - CASH SUPPORT FOR CHILD CARE				
	OPERATING		HMS	15,011,811 A	15,011,811 A
			HMS	38,530,754 N	38,530,754 N
5.	HMS501 - IN-COMMUNITY YOUTH PROGRAMS			12.00 *	12.00 *
	OPERATING		HMS	7,243,874 A	6,981,308 A
			HMS	3,657,363 N	3,653,524 N
6.	HMS503 - HAWAII YOUTH CORRECTIONAL FACILITY (HYCF)			124.00 *	126.00 *
	OPERATING		HMS	10,078,850 A	10,906,562 A
7.	DEF112 - SERVICES TO VETERANS			24.00 *	24.00 *
	OPERATING		DEF	2,358,443 A	4,882,000 A
	INVESTMENT CAPITAL		DEF	7,021,000 C	4,044,000 C
			DEF	3,000 N	1,000 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
8.	HMS601 - ADULT AND COMMUNITY CARE SERVICES			62.42 *	65.84 *
	OPERATING		HMS	5,480,824 A	5,353,096 A
			HMS	6.58 *	8.66 *
			HMS	5,005,123 N	4,952,073 N
			HMS	10,000 R	10,000 R
			HMS	382,003 U	366,525 U
9.	HMS202 - AGED, BLIND AND DISABLED PAYMENTS				
	OPERATING		HMS	4,029,480 A	4,029,480 A
10.	HMS204 - GENERAL ASSISTANCE PAYMENTS				
	OPERATING		HMS	21,289,056 A	21,289,056 A
11.	HMS206 - FEDERAL ASSISTANCE PAYMENTS				
	OPERATING		HMS	5,108,943 N	5,108,943 N
12.	HMS211 - CASH SUPPORT FOR FAMILIES - SELF-SUFFICIENCY				
	OPERATING		HMS	26,073,079 A	22,694,156 A
			HMS	44,000,000 N	44,000,000 N
13.	HMS220 - RENTAL HOUSING SERVICES				
	OPERATING		HMS	4,401,556 A	4,301,556 A
				171.00 *	190.00 *
			HMS	36,142,225 N	36,503,079 N
				13.00 *	13.00 *
			HMS	4,112,106 W	4,043,038 W
	INVESTMENT CAPITAL		HMS	31,120,000 C	60,222,000 C
14.	HMS229 - HPHA ADMINISTRATION				
	OPERATING		HMS	71.00 *	71.00 *
			HMS	34,769,688 N	34,532,922 N
				17.00 *	17.00 *
			HMS	2,558,320 W	2,514,399 W
15.	HMS222 - RENTAL ASSISTANCE SERVICES				
	OPERATING		HMS	1.25 *	1.25 *
				1,059,030 A	1,053,819 A
				16.75 *	16.75 *
			HMS	25,875,685 N	25,819,450 N
16.	HMS224 - HOMELESS SERVICES				
	OPERATING		HMS	4.00 *	6.00 *
			HMS	15,525,824 A	15,460,711 A
			HMS	1,369,108 N	1,369,108 N
17.	HMS605 - COMMUNITY-BASED RESIDENTIAL SUPPORT				
	OPERATING		HMS	17,125,395 A	17,810,955 A
18.	HMS401 - HEALTH CARE PAYMENTS				
	OPERATING		HMS	785,583,342 A	795,601,950 A
			HMS	847,877,988 N	885,040,887 N
			HMS	12,000,000 U	12,000,000 U
19.	HMS236 - CASE MANAGEMENT FOR SELF-SUFFICIENCY				
	OPERATING		HMS	310.66 *	304.98 *
				13,241,512 A	13,276,042 A
				244.34 *	240.02 *
			HMS	18,821,328 N	18,126,638 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
20.	HMS238 -	DISABILITY DETERMINATION			
	OPERATING		HMS	45.00 * 7,335,374 N	45.00 * 7,227,756 N
21.	ATG500 -	CHILD SUPPORT ENFORCEMENT SERVICES			
	OPERATING		ATG	81.94 * 3,859,392 A 159.06 * 14,911,287 N	81.94 * 3,898,136 A 159.06 * 14,584,925 N
			ATG	2,231,224 T	2,226,871 T
22.	HMS237 -	EMPLOYMENT AND TRAINING			
	OPERATING		HMS	469,505 A	469,505 A
			HMS	699,734 N	699,734 N
23.	HHL602 -	PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS			
	OPERATING		HHL	115.00 * 13,030,827 B 3.00 * 15,341,820 N	115.00 * 12,784,660 B 3.00 * 15,341,820 N
			HHL	82.00 * 157,091,393 T	82.00 * 156,865,624 T
	INVESTMENT CAPITAL		HHL	0 C	660,000 C
			HHL	20,000,000 N	20,000,000 N
24.	HTH904 -	EXECUTIVE OFFICE ON AGING			
	OPERATING		HTH	5.74 * 5,948,402 A 8.26 * 7,802,796 N	5.74 * 5,933,014 A 8.26 * 7,569,144 N
	INVESTMENT CAPITAL		HTH	500,000 C	750,000 C
25.	HTH520 -	DISABILITY AND COMMUNICATIONS ACCESS BOARD			
	OPERATING		HTH	5.00 * 1,230,625 A 10,000 B 2.00 * 195,776 U	5.00 * 1,199,421 A 10,000 B 2.00 * 188,295 U
26.	HMS902 -	GENERAL SUPPORT FOR HEALTH CARE PAYMENTS			
	OPERATING		HMS	121.67 * 6,674,351 A 117.33 * 20,786,398 N	129.17 * 10,581,400 A 124.83 * 42,865,040 N
27.	HMS903 -	GENERAL SUPPORT FOR SELF SUFFICIENCY SERVICES			
	OPERATING		HMS	34.05 * 49,536,954 A 38.95 * 62,928,283 N	44.22 * 38,531,448 A 46.78 * 63,166,266 N
28.	HMS904 -	GENERAL ADMINISTRATION (DHS)			
	OPERATING		HMS	141.50 * 7,102,509 A 13.50 * 1,347,016 N	141.50 * 7,156,099 A 13.50 * 1,308,532 N
29.	HMS901 -	GENERAL SUPPORT FOR SOCIAL SERVICES			
	OPERATING		HMS	10.22 * 1,774,170 A 5.78 * 1,539,447 N	13.97 * 2,203,872 A 7.03 * 1,685,886 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
G. FORMAL EDUCATION					
1.	EDN100 - SCHOOL BASED BUDGETING				
	OPERATING		EDN	12,552.60 *	12,552.60 *
			EDN	775,148,488 A	772,510,601 A
			EDN	7,530,000 B	7,530,000 B
			EDN	168,983,026 N	166,428,581 N
			EDN	28,990,000 T	28,919,060 T
			EDN	4,000,000 U	3,995,605 U
			EDN	28,525,743 V	V
			EDN	3,389,438 W	3,379,491 W
	INVESTMENT CAPITAL		EDN	143,046,000 B	291,272,000 B
			EDN	300,000 C	C
			EDN	N	22,000,000 N
2.	EDN150 - COMPREHENSIVE STUDENT SUPPORT SERVICES				
	OPERATING		EDN	5,116.62 *	5,116.62 *
			EDN	322,144,665 A	313,456,272 A
				100,000 B	100,000 B
				2.00 *	2.00 *
			EDN	45,714,379 N	44,932,504 N
				4.00 *	4.00 *
			EDN	3,500,000 W	3,500,000 W
3.	EDN200 - INSTRUCTIONAL SUPPORT				
	OPERATING		EDN	384.00 *	379.00 *
			EDN	45,745,674 A	43,767,584 A
				6.00 *	11.00 *
			EDN	2,000,000 B	2,321,746 B
			EDN	687,000 N	667,385 N
			EDN	250,000 U	242,099 U
			EDN	19,356,874 V	20,073,434 V
4.	EDN300 - STATE ADMINISTRATION				
	OPERATING		EDN	449.00 *	449.00 *
			EDN	43,344,985 A	41,945,114 A
				35,000 N	35,000 N
5.	EDN400 - SCHOOL SUPPORT				
	OPERATING		EDN	640.00 *	640.00 *
			EDN	174,109,976 A	173,929,086 A
				726.50 *	726.50 *
			EDN	33,827,160 B	42,045,157 B
				3.00 *	3.00 *
			EDN	47,240,109 N	49,143,812 N
				4.00 *	4.00 *
			EDN	12,522,625 W	12,495,846 W
	INVESTMENT CAPITAL		EDN	5,200,000 B	5,200,000 B
6.	EDN500 - SCHOOL COMMUNITY SERVICES				
	OPERATING		EDN	31.50 *	31.50 *
			EDN	5,072,889 A	2,500,000 A
			EDN	3,631,000 B	3,631,000 B
			EDN	954,222 N	3,266,540 N
			EDN	4,000,000 T	4,000,000 T
			EDN	6,300,000 U	6,300,000 U
			EDN	10,995,000 W	10,995,000 W
7.	EDN600 - CHARTER SCHOOLS				
	OPERATING		EDN	59,680,071 A	61,757,919 A
	INVESTMENT CAPITAL		EDN	2,118,000 C	200,000 C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
8.	BUF745 - RETIREMENT BENEFITS ³ - DOE	OPERATING	BUF	280,677,870 A	252,741,189 A
9.	BUF765 - HEALTH PREMIUM PAYMENTS - DOE	OPERATING	BUF	236,950,282 A	225,126,160 A
10.	BUF725 - DEBT SERVICE ³ - DOE	OPERATING	BUF	222,989,025 A	254,331,904 A
11.	AGS807 - SCHOOL R&M, NEIGHBOR ISLAND DISTRICTS	OPERATING	AGS	78.00 *	80.00 *
			AGS	4,470,406 A	4,347,973 A
			AGS	1,500,000 U	1,500,000 U
12.	EDN407 - PUBLIC LIBRARIES	OPERATING	EDN	555.50 *	555.00 *
			EDN	28,847,163 A	28,070,484 A
			EDN	3,125,000 B	3,125,000 B
			EDN	1,365,244 N	1,365,244 N
		INVESTMENT CAPITAL	AGS	3,075,000 C	5,570,000 C
13.	DEF114 - HAWAII NATIONAL GUARD YOUTH CHALLENGE ACADEMY	OPERATING	DEF	1,570,882 A	1,551,864 A
			DEF	5,631,208 N	5,568,699 N
14.	UOH100 - UNIVERSITY OF HAWAII, MANOA	OPERATING	UOH	3,421.12 *	3,416.87 *
			UOH	203,626,623 A	180,988,561 A
			UOH	293.25 *	398.25 *
			UOH	220,023,752 B	286,495,335 B
			UOH	78.06 *	78.06 *
			UOH	5,821,702 N	5,890,412 N
			UOH	134.25 *	31.25 *
			UOH	72,091,625 W	55,253,604 W
		INVESTMENT CAPITAL	UOH	700,000 C	29,325,000 C
15.	UOH110 - UNIVERSITY OF HAWAII, JOHN A. BURNS SCHOOL OF MEDICINE	OPERATING	UOH	198.22 *	200.47 *
			UOH	16,928,514 A	15,988,940 A
			UOH	13,408,949 B	18,408,949 B
			UOH	4,568,547 W	5,953,547 W
16.	UOH210 - UNIVERSITY OF HAWAII, HILO	OPERATING	UOH	514.75 *	514.75 *
			UOH	30,414,945 A	27,977,399 A
			UOH	95.00 *	95.00 *
			UOH	33,378,541 B	40,655,319 B
			UOH	394,018 N	394,018 N
			UOH	8.50 *	8.50 *
			UOH	6,271,946 W	5,747,237 W
		INVESTMENT CAPITAL	UOH	20,000,000 C	25,000 C
			UOH	16,000,000 E	E
			UOH	4,000,000 N	N
17.	UOH220 - HAWAII SMALL BUSINESS DEVELOPMENT CENTER	OPERATING	UOH	978,941 A	978,941 A
18.	UOH700 - UNIVERSITY OF HAWAII, WEST OAHU	OPERATING	UOH	93.00 *	95.00 *
			UOH	5,694,225 A	5,114,520 A
			UOH	6,897,408 B	35,000,000 B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M	FISCAL M
				YEAR O 2011-2012 F	YEAR O 2012-2013 F
			UOH	13,193 N	20,000 N
			UOH	327,958 W	3,700,000 W
		INVESTMENT CAPITAL	UOH	2,500,000 C	4,700,000 C
			UOH	E	945,000 E
19.	UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES				
				1,831.00 *	1,831.00 *
	OPERATING		UOH	116,190,704 A	107,265,299 A
				82.00 *	82.00 *
			UOH	85,655,448 B	87,898,616 B
				15.60 *	15.60 *
			UOH	4,275,325 N	4,394,828 N
			UOH	5,041,211 W	5,041,211 W
	INVESTMENT CAPITAL		UOH	32,013,000 C	37,501,000 C
20.	UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT				
				403.00 *	409.00 *
	OPERATING		UOH	11,862,050 A	38,535,338 A
				8.00 *	33.00 *
			UOH	35,736,560 B	39,276,154 B
				4.00 *	4.00 *
			UOH	909,175 N	909,175 N
				15.00 *	15.00 *
			UOH	17,096,150 W	17,033,031 W
	INVESTMENT CAPITAL		UOH	80,004,000 C	69,413,000 C
21.	BUF748 - RETIREMENT BENEFITS ³ - UH				
	OPERATING		BUF	123,256,258 A	123,163,259 A
22.	BUF768 - HEALTH PREMIUM PAYMENTS - UH				
	OPERATING		BUF	78,731,201 A	79,482,140 A
23.	BUF728 - DEBT SERVICE ³ - UH				
	OPERATING		BUF	82,527,939 A	94,127,897 A

H. CULTURE AND RECREATION

1.	UOH881 - UNIVERSITY OF HAWAII, AQUARIA				
				13.00 *	13.00 *
	OPERATING		UOH	611,256 A	611,256 A
				7.00 *	7.00 *
			UOH	3,117,141 B	3,117,141 B
			UOH	996,499 W	996,499 W
2.	AGS881 - STATE FOUNDATION ON CULTURE AND THE ARTS				
				936,332 A	936,332 A
	OPERATING		AGS	15.50 *	16.50 *
			AGS	4,215,466 B	4,175,415 B
				5.00 *	5.00 *
			AGS	1,306,936 N	1,298,127 N
			AGS	625,000 U	0 U
3.	AGS818 - KING KAMEHAMEHA CELEBRATION COMMISSION				
	OPERATING		AGS	57,874 T	55,280 T
4.	LNR802 - HISTORIC PRESERVATION				
				17.00 *	17.00 *
	OPERATING		LNR	1,360,596 A	1,245,006 A
			LNR	151,228 B	146,124 B
			LNR	751,089 N	734,069 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
5.	LNR804 - FOREST AND OUTDOOR RECREATION			29.50 *	29.50 *
	OPERATING		LNR	1,251,336 A	1,210,541 A
			LNR	6.50 *	6.50 *
			LNR	712,912 B	692,766 B
			LNR	5.00 *	5.00 *
			LNR	1,921,072 N	2,199,104 N
			LNR	572,088 W	569,534 W
	INVESTMENT CAPITAL		LNR	3,325,000 C	635,000 C
6.	LNR805 - RECREATIONAL FISHERIES			7.00 *	7.00 *
	OPERATING		LNR	265,524 A	256,231 A
			LNR	76,131 B	75,815 B
			LNR	1,021,746 N	1,017,216 N
7.	LNR806 - PARKS ADMINISTRATION AND OPERATION			78.00 *	78.00 *
	OPERATING		LNR	4,214,163 A	3,966,421 A
			LNR	38.00 *	35.00 *
			LNR	6,467,439 B	6,386,491 B
			LNR	1,218,456 N	1,218,456 N
	INVESTMENT CAPITAL		LNR	31,075,000 C	25,470,000 C
			LNR	200,000 N	200,000 N
8.	LNR801 - OCEAN-BASED RECREATION			104.00 *	104.00 *
	OPERATING		LNR	16,808,643 B	16,618,658 B
			LNR	1,001,411 N	1,000,703 N
	INVESTMENT CAPITAL		LNR	13,825,000 C	6,650,000 C
			LNR	2,000,000 E	E
			LNR	1,500,000 N	1,000,000 N
9.	AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM			38.50 *	38.50 *
	OPERATING		AGS	8,944,121 B	8,841,719 B
	INVESTMENT CAPITAL		AGS	5,150,000 C	5,150,000 C
I. PUBLIC SAFETY					
1.	PSD402 - HALAWA CORRECTIONAL FACILITY			395.00 *	395.00 *
	OPERATING		PSD	22,526,784 A	21,872,081 A
			PSD	28,719 W	28,719 W
2.	PSD404 - WAIAWA CORRECTIONAL FACILITY			110.00 *	116.00 *
	OPERATING		PSD	5,943,026 A	6,078,169 A
			PSD	15,000 W	15,000 W
3.	PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER			163.00 *	163.00 *
	OPERATING		PSD	8,475,622 A	8,386,368 A
4.	PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER			185.00 *	185.00 *
	OPERATING		PSD	9,328,952 A	9,040,051 A
			PSD	209,721 S	209,721 S

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
5.		PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER		488.00 *	488.00 *
		OPERATING	PSD	26,897,053 A	26,089,016 A
			PSD	30,000 W	30,000 W
6.		PSD408 - KAUAI COMMUNITY CORRECTIONAL CENTER		68.00 *	68.00 *
		OPERATING	PSD	3,651,826 A	3,557,841 A
7.		PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER		132.00 *	132.00 *
		OPERATING	PSD	6,473,553 A	6,280,526 A
8.		PSD410 - INTAKE SERVICE CENTERS		59.00 *	61.00 *
		OPERATING	PSD	3,275,470 A	3,229,704 A
9.		PSD420 - CORRECTIONS PROGRAM SERVICES		164.00 *	164.00 *
		OPERATING	PSD	18,588,472 A	18,627,742 A
10.		PSD421 - HEALTH CARE		196.10 *	196.10 *
		OPERATING	PSD	20,775,735 A	21,475,211 A
11.		PSD422 - HAWAII CORRECTIONAL INDUSTRIES		2.00 *	2.00 *
		OPERATING	PSD	9,987,705 W	9,813,527 W
12.		PSD808 - NON-STATE FACILITIES		9.00 *	9.00 *
		OPERATING	PSD	64,659,911 A	60,849,315 A
13.		PSD502 - NARCOTICS ENFORCEMENT		13.00 *	13.00 *
		OPERATING	PSD	954,449 A	916,360 A
			PSD	206,161 N	201,933 N
				7.00 *	7.00 *
			PSD	682,964 W	661,051 W
14.		PSD503 - SHERIFF		296.00 *	296.00 *
		OPERATING	PSD	13,213,117 A	12,853,995 A
				59.00 *	59.00 *
			PSD	5,076,280 U	4,897,003 U
15.		PSD611 - ADULT PAROLE DETERMINATIONS		3.00 *	5.00 *
		OPERATING	PSD	216,988 A	329,152 A
16.		PSD612 - ADULT PAROLE SUPERVISION AND COUNSELING		55.00 *	61.00 *
		OPERATING	PSD	3,523,983 A	3,686,469 A
17.		PSD613 - CRIME VICTIM COMPENSATION COMMISSION		*	5.00 *
		OPERATING	PSD	A	476,300 A
				8.00 *	8.00 *
			PSD	1,892,173 B	1,865,067 B
			PSD	859,315 N	856,625 N

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M	FISCAL M
				YEAR O	YEAR O
				2011-2012 F	2012-2013 F
18.	PSD900 - GENERAL ADMINISTRATION				
	OPERATING		PSD	137.00 *	146.00 *
			PSD	10,364,924 A	11,511,429 A
			PSD	667,984 B	667,984 B
			PSD	75,065 T	75,065 T
	INVESTMENT CAPITAL		PSD	9,000,000 C	8,000,000 C
19.	ATG231 - STATE CRIMINAL JUSTICE INFORMATION AND IDENTIFICATION				
				26.50 *	26.50 *
	OPERATING		ATG	1,499,894 A	1,456,795 A
			ATG	2,005,443 N	2,285,972 N
				30.50 *	30.50 *
			ATG	3,485,609 W	3,205,835 W
20.	LNR810 - PREVENTION OF NATURAL DISASTERS				
				8.50 *	8.50 *
	OPERATING		LNR	2,059,158 B	2,033,971 B
				0.50 *	0.50 *
			LNR	560,602 N	369,405 N
21.	DEF110 - AMELIORATION OF PHYSICAL DISASTERS				
				114.10 *	114.10 *
	OPERATING		DEF	10,606,579 A	10,817,065 A
				99.65 *	101.15 *
			DEF	88,233,296 N	85,712,950 N
			DEF	464,458 S	464,458 S
			DEF	12,044,738 U	86,827 U
	INVESTMENT CAPITAL		AGS	707,000 C	C
			DEF	9,593,000 C	13,050,000 C
			AGS	1,046,000 N	N
			DEF	47,026,000 N	62,935,000 N

J. INDIVIDUAL RIGHTS

1.	CCA102 - CABLE TELEVISION			4.00 *	7.00 *
	OPERATING		CCA	1,786,537 B	2,110,809 B
2.	CCA103 - CONSUMER ADVOCATE FOR COMMUNICATION, UTILITIES, AND TRANSPORTATION SERVICES			23.00 *	23.00 *
	OPERATING		CCA	2,701,465 B	2,938,787 B
3.	CCA104 - FINANCIAL SERVICES REGULATION			34.00 *	34.00 *
	OPERATING		CCA	3,387,006 B	3,277,594 B
			CCA	110,000 T	110,000 T
4.	CCA105 - PROFESSIONAL AND VOCATIONAL LICENSING			52.00 *	54.00 *
	OPERATING		CCA	5,573,217 B	5,847,701 B
				5.00 *	8.00 *
			CCA	2,086,311 T	2,026,466 T
5.	BUF901 - PUBLIC UTILITIES COMMISSION			62.00 *	62.00 *
	OPERATING		BUF	11,049,409 B	11,269,551 B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
6.	CCA106 -	INSURANCE REGULATORY SERVICES			
	OPERATING		CCA	81.00*	81.00*
			CCA	14,281,755 B	14,040,126 B
				200,000 T	200,000 T
7.	CCA110 -	OFFICE OF CONSUMER PROTECTION			
	OPERATING		CCA	14.00*	16.00*
			CCA	1,573,840 B	1,524,748 B
				100,681 T	100,681 T
8.	AGR812 -	MEASUREMENT STANDARDS			
	OPERATING		AGR	7.00*	7.00*
				384,525 A	376,025 A
			AGR	* B	4.00*
					420,000 B
9.	CCA111 -	BUSINESS REGISTRATION AND SECURITIES REGULATION			
	OPERATING		CCA	70.00*	71.00*
				6,649,240 B	6,472,012 B
10.	CCA112 -	REGULATED INDUSTRIES COMPLAINTS OFFICE			
	OPERATING		CCA	65.00*	66.00*
				5,579,836 B	5,405,578 B
11.	CCA191 -	GENERAL SUPPORT			
	OPERATING		CCA	43.00*	44.00*
				6,383,469 B	6,532,299 B
12.	LTG105 -	ENFORCEMENT OF INFORMATION PRACTICES			
	OPERATING		LTG	5.00*	5.00*
				401,935 A	390,870 A
13.	BUF151 -	OFFICE OF THE PUBLIC DEFENDER			
	OPERATING		BUF	81.00*	81.00*
				9,795,299 A	9,479,864 A
14.	LNR111 -	CONVEYANCES AND RECORDINGS			
	OPERATING		LNR	60.00*	58.00*
				4,129,966 B	4,396,939 B
15.	HMS888 -	COMMISSION ON THE STATUS OF WOMEN			
	OPERATING		HMS	1.00*	1.00*
				161,915 A	155,084 A

K. GOVERNMENT-WIDE SUPPORT

1.	GOV100 -	OFFICE OF THE GOVERNOR			
	OPERATING		GOV	27.00*	25.00*
			GOV	3,176,357 A	2,921,286 A
	INVESTMENT CAPITAL		GOV	87,147 T	87,147 T
				1,000 C	1,000 C
2.	LTG100 -	OFFICE OF THE LIEUTENANT GOVERNOR			
	OPERATING		LTG	3.00*	3.00*
				646,188 A	629,904 A
3.	BED144 -	STATEWIDE PLANNING AND COORDINATION			
	OPERATING		BED	12.00*	12.00*
				1,110,081 A	1,079,447 A
				5.00*	5.00*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
			BED	2,692,310 N	2,693,496 N
			BED	2,000,000 W	2,000,000 W
4.		BED103 - STATEWIDE LAND USE MANAGEMENT			
		OPERATING	BED	5.00 * 488,771 A	5.00 * 477,300 A
5.		BED130 - ECONOMIC PLANNING AND RESEARCH			
		OPERATING	BED	13.00 * 853,009 A	14.00 * 861,411 A
6.		BUF101 - DEPARTMENTAL ADMINISTRATION AND BUDGET DIVISION			
		OPERATING	BUF	39.25 * 11,764,411 A	39.25 * 11,935,833 A
			BUF	2,141,007 B	2,579,623 B
			BUF	239,798 N	306,558 N
			BUF	8,548 T	10,116 T
				0.75 * 43,632 U	0.75 * 49,598 U
			BUF	26,491 W	33,136 W
		INVESTMENT CAPITAL	BUF	22,000 B	24,000 B
				568,246,000 C	326,472,000 C
7.		AGS871 - CAMPAIGN SPENDING COMMISSION			
		OPERATING	AGS	5.00 * 1,108,051 T	5.00 * 4,657,202 T
8.		AGS879 - OFFICE OF ELECTIONS			
		OPERATING	AGS	17.50 * 1,829,581 A	17.50 * 3,694,035 A
				0.50 * 7,473,714 N	0.50 * 7,471,636 N
9.		TAX100 - COMPLIANCE			
		OPERATING	TAX	179.00 * 8,786,865 A	189.00 * 8,810,585 A
10.		TAX105 - TAX SERVICES AND PROCESSING			
		OPERATING	TAX	122.00 * 6,209,621 A	122.00 * 6,020,361 A
11.		TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION			
		OPERATING	TAX	72.00 * 7,339,726 A	72.00 * 6,880,202 A
			TAX	1,057,875 B	1,053,627 B
		INVESTMENT CAPITAL	TAX	333,000 C	C
12.		AGS101 - ACCOUNTING SYSTEM DEVELOPMENT AND MAINTENANCE			
		OPERATING	AGS	6.00 * 513,981 A	6.00 * 499,348 A
13.		AGS102 - EXPENDITURE EXAMINATION			
		OPERATING	AGS	16.00 * 1,098,527 A	16.00 * 1,074,357 A
14.		AGS103 - RECORDING AND REPORTING			
		OPERATING	AGS	11.00 * 694,124 A	11.00 * 753,395 A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
15.	AGS104 -	INTERNAL POST AUDIT			
	OPERATING		AGS	6.00 * 441,975 A	6.00 * 428,238 A
16.	BUF115 -	FINANCIAL ADMINISTRATION			
	OPERATING		BUF	11.00 * 1,793,147 A	12.00 * 1,814,216 A
			BUF	9.00 * 7,018,984 T	9.00 * 7,000,402 T
			BUF	1.00 * 70,260 U	1.00 * 70,260 U
17.	BUF721 -	DEBT SERVICE PAYMENTS - STATE ²			
	OPERATING		BUF	258,583,782 A	294,929,786 A
18.	ATG100 -	LEGAL SERVICES			
	OPERATING		ATG	223.46 * 17,712,629 A	220.30 * 17,461,848 A
			ATG	22.52 * 2,405,785 B	21.80 * 2,450,840 B
			ATG	13.00 * 8,539,330 N	13.50 * 8,512,435 N
			ATG	R 0.50 * 3,990,504 T	52,760 R 0.50 * 3,979,153 T
			ATG	57.35 * 9,381,701 U	56.53 * 9,110,189 U
			ATG	* 2,539,009 V	0.20 * 766,321 V
			ATG	4.45 * 3,114,984 W	4.45 * 3,130,747 W
19.	AGS131 -	INFORMATION PROCESSING AND COMMUNICATIONS SERVICES			
	OPERATING		AGS	115.00 * 12,404,923 A	117.00 * 22,684,027 A
			AGS	* 74,410 B	7.00 * 86,944 B
			AGS	33.00 * 3,312,584 U	33.00 * 3,312,584 U
	INVESTMENT CAPITAL		AGS	8,235,000 C	23,135,000 C
20.	AGS111 -	ARCHIVES - RECORDS MANAGEMENT			
	OPERATING		AGS	16.00 * 780,072 A	16.00 * 842,274 A
			AGS	U 200,000 U	200,000 U
21.	AGS891 -	WIRELESS ENHANCED 911 BOARD			
	OPERATING		AGS	14,000,000 B	9,000,000 B
22.	HRD102 -	WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION, AND EFFECTIVENESS			
	OPERATING		HRD	81.00 * 12,979,935 A	81.00 * 12,792,779 A
			HRD	700,000 B	700,000 B
			HRD	4,886,281 U	4,886,281 U
23.	HRD191 -	SUPPORTING SERVICES - HUMAN RESOURCES DEVELOPMENT			
	OPERATING		HRD	11.00 * 1,444,386 A	11.00 * 1,425,386 A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
24.	BUF141	EMPLOYEES RETIREMENT SYSTEM			
	OPERATING		BUF	99.00 * 10,828,223 X	99.00 * 16,598,987 X
25.	BUF143	EMPLOYER UNION TRUST FUND ²			
	OPERATING		BUF	36.00 * 5,109,314 T	49.00 * 5,334,612 T
26.	BUF741	RETIREMENT BENEFITS PAYMENTS - STATE ²			
	OPERATING		BUF	189,315,975 A	256,807,477 A
27.	BUF761	HEALTH PREMIUM PAYMENTS - STATE ²			
	OPERATING		BUF	138,579,993 A	200,743,419 A
28.	LNR101	PUBLIC LANDS MANAGEMENT			
	OPERATING		LNR	49.00 * 12,308,577 B	52.00 * 13,267,547 B
	INVESTMENT CAPITAL		LNR	75,238 N	73,932 N
			LNR	C	7,000,000 C
			LNR	2,500,000 S	2,500,000 S
29.	AGS203	STATE RISK MANAGEMENT AND INSURANCE ADMINISTRATION			
	OPERATING		AGS	6,987,995 A	5,987,995 A
			AGS	4.00 * 25,285,334 W	4.00 * 25,271,640 W
30.	AGS211	LAND SURVEY			
	OPERATING		AGS	10.00 * 646,586 A	10.00 * 627,633 A
			AGS	285,000 U	285,000 U
31.	AGS223	OFFICE LEASING			
	OPERATING		AGS	4.00 * 10,613,034 A	4.00 * 10,304,702 A
			AGS	5,500,000 U	5,500,000 U
32.	AGS221	PUBLIC WORKS - PLANNING, DESIGN, AND CONSTRUCTION			
	OPERATING		AGS	16.00 * 1,199,707 A	16.00 * 1,160,938 A
			AGS	4,000,000 W	4,000,000 W
	INVESTMENT CAPITAL		AGS	46,004,000 C	49,365,000 C
			AGS	3,261,000 R	R
33.	AGS231	CENTRAL SERVICES - CUSTODIAL SERVICES			
	OPERATING		AGS	117.00 * 15,228,845 A	119.00 * 19,468,620 A
			AGS	58,744 B	58,744 B
			AGS	1,099,084 U	1,699,084 U
34.	AGS232	CENTRAL SERVICES - GROUNDS MAINTENANCE			
	OPERATING		AGS	27.00 * 1,652,934 A	27.00 * 1,619,616 A
35.	AGS233	CENTRAL SERVICES - BUILDING REPAIRS AND ALTERATIONS			
	OPERATING		AGS	33.00 * 2,860,134 A	33.00 * 2,803,323 A
			AGS	U	100,000 U
36.	AGS240	STATE PROCUREMENT			
	OPERATING		AGS	22.00 * 1,014,722 A	22.00 * 1,089,605 A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
37.	AGS244 -	SURPLUS PROPERTY MANAGEMENT			
	OPERATING		AGS	5.00 * 1,798,996 W	5.00 * 1,786,042 W
38.	AGS251 -	AUTOMOTIVE MANAGEMENT - MOTOR POOL			
	OPERATING		AGS	12.50 * 2,549,863 W	12.50 * 2,515,558 W
39.	AGS252 -	AUTOMOTIVE MANAGEMENT - PARKING CONTROL			
	OPERATING		AGS	24.50 * 3,355,757 W	24.50 * 3,304,697 W
40.	AGS901 -	GENERAL ADMINISTRATIVE SERVICES			
	OPERATING		AGS	35.00 * 2,694,264 A	35.00 * 2,623,500 A
			AGS	2.00 * 146,503 U	2.00 * 139,795 U
41.	SUB201 -	CITY AND COUNTY OF HONOLULU			
	OPERATING		SUB	A	A
	INVESTMENT CAPITAL		CCH	2,000,000 C	2,125,000 C
41A.	SUB301 -	COUNTY OF HAWAII			
	OPERATING		SUB	A	303,177 A
	INVESTMENT CAPITAL		COH	C	1,000,000 C
42.	SUB401 -	COUNTY OF MAUI			
	OPERATING		SUB	A	134,512 A
	INVESTMENT CAPITAL		COM	C	1,920,000 C
43.	SUB501 -	COUNTY OF KAUAI			
	OPERATING		SUB	A	70,920 A
	INVESTMENT CAPITAL		COK	C	1,655,000 C"

SECTION 4. Part III, Act 164, Session Laws of Hawaii 2011, is amended:

(1) By amending section 5 to read as follows:

"SECTION 5. Provided that of the special fund appropriation for agricultural resource management (AGR 141), the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended by the department of agriculture for the continued operation and maintenance of the east Kauai irrigation system by an east Kauai water users cooperative."

(2) By amending section 9 to read as follows:

"SECTION 9. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$78,107,803 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of ~~[\$95,148,450]~~ \$131,372,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for the following purposes:

Purpose	FY 2011-2012	FY 2012-2013
Interest and principal on revenue bonds	\$78,107,803	[\$95,148,450] <u>\$131,372,000;</u>

provided further that any unexpected fund appropriation may be expended for principal and interest on revenue bonds payable from the passenger facility charge special fund, as necessary; and provided further that any unexpended funds shall lapse to the airport special fund.”

(3) By adding a new section to read as follows:

“SECTION 9.1. Provided that of the rental motor vehicle customer facility charge special fund appropriation (MOF: B) for airports administration (TRN 195), the sum of \$20,000,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for interest and principal on the rental motor vehicle customer facility charge revenue bonds; and provided further that any unexpended funds shall lapse to the rental motor vehicle customer facility charge special fund.”

(4) By adding a new section to read as follows:

“SECTION 9.2. Provided that of the rental motor vehicle customer facility charge special fund appropriation (MOF: B) for airports administration (TRN 195), the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for interest and principal on Employment - Based Immigration: Fifth Preference (EB-5) loan; and provided further that any unexpended funds shall lapse to the rental motor vehicle customer facility charge special fund.”

(5) By amending section 12 to read as follows:

“SECTION 12. Provided that of the special fund appropriations for the highways division (TRN 501-TRN [564] 595), the following sums specified for special repair and maintenance projects in fiscal biennium 2011-2013 shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
TRN 501	\$20,700,000	[\$ 36,443,000] \$36,693,000
TRN 511	\$ 9,500,000	\$16,500,000
TRN 531	\$12,000,000	\$20,500,000
TRN 561	\$ 7,000,000	\$12,000,000
TRN 595		\$ 757,000;

and provided further that any unexpended funds shall lapse to the state highway fund.”

(6) By amending section 13 to read:

“SECTION 13. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$52,871,334 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of ~~[\$51,523,720]~~ \$54,233,616 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
Interest and principal on general obligation bonds	\$ 8,166,474	\$ 4,820,206
Interest and principal on revenue bonds	\$44,704,860	[\$46,703,514;] \$49,413,410;

provided that any unexpended funds shall lapse to the highway special fund.”

(7) By amending section 14 to read as follows:

“SECTION 14. Provided that of the special fund appropriation for Kauai Highways (TRN 561), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of ~~[\$500,000]~~ \$250,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended by the department of transportation to provide Saturday contraflow services along Kuhio Highway State Route 56 from Kapaa to Hanamaula⁴.”

(8) By adding a new section to read as follows:

“SECTION 14.2. Provided that of the federal fund appropriation for highways administration (TRN 595), the sum of \$2,400,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for the statewide noxious invasive pest program; provided further that the funds shall not be expended for any other purpose; and provided further that the department of transportation shall submit a report to the legislature detailing federal fund expenditures for statewide noxious invasive pest program related expenses no later than November 1, 2013, and November 1, 2014.”

(9) By adding a new section to read as follows:

“SECTION 16.1. Provided that the department of health tobacco settlement (HTH 590) shall prepare an annual comprehensive report detailing all uses and expenditures from the Hawaii tobacco settlement special fund; provided further that the report shall include detailed expenditures from all recipients of such funds, including the department of health, department of human services, University of Hawaii John A. Burns School of Medicine, and the nonprofit entity that administers the trust fund as stated in HRS328L-5; provided further that the report shall include from each recipient all debt service payments and operational costs paid from Hawaii tobacco settlement special funds; and provided further that the department of health shall submit this report to the legislature no later than October 1 of each year.”

(10) By adding a new section to read as follows:

“SECTION 16.2. Provided that the department of health shall prepare a five-year financial plan which incorporates any or all previous retooling, restructuring, or strategic plans into one all-inclusive document; provided further that the plan shall account for each year of the five year period beginning with the 2013 calendar year and shall include:

- (1) A detailed description of each agency of the department and program ID, including the program objective for each;
- (2) A detailed description of department-wide and agency specific goals of current reorganization efforts;
- (3) A cost-benefit analysis of any proposed personnel and/or funding transfer within the department;
- (4) A department-wide and agency specific expenditure plan including all means of financing for each of the five years;
- (5) Forecasted changes in the regulatory environment and the department's ability to respond to those changes, including potential funding impacts; and
- (6) Anticipated increases or decreases in demand for services, including anticipated impact to resource expenditures resulting from those changes and detailed forecasts in anticipated clientele numbers and corresponding funding needs by program ID;

and provided further that the five year plan shall be submitted to the legislature no later than November 1, 2012.”

(11) By adding a new section to read as follows:

"SECTION 18.2. (a) Provided that of the general fund appropriation for school support (EDN 400), the sum of \$25,000,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended by the department of education for home-to-school transportation costs not mandated by state or federal law; provided further that the funds shall be expended only if all of the following occur:

- (1) The department conducts a comprehensive assessment of need for each student transportation route that considers ridership rates, socioeconomic background of riders, distances from homes to schools, student safety, and cost effectiveness;
 - (2) Student transportation routes are provided based upon need;
 - (3) The board of education approves of the expenditure of funds for each provided route; and
 - (4) Student transportation routes not mandated by state or federal law are provided in all four counties.
- (b) Provided further that the department of education shall prepare a report that includes the following:
- (1) Documentation of all assessments performed and actions taken related to this section;
 - (2) Cost savings measures implemented and changes to the methods used to procure student transportation services for fiscal year 2012-2013; and
 - (3) Planned cost savings measures, changes to the methods used to procure student transportation services, and a comprehensive plan for providing and paying for student transportation services for fiscal biennium 2013-2015;

and provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2013 regular session."

- (12) By amending section 19 to read as follows:

"SECTION 19. Provided that of the general fund appropriation for charter schools (EDN 600), the sum of \$57,446,372 or so much thereof as may be necessary for fiscal year 2011-2012 [and the sum of \$60,603,057 or so much thereof as may be necessary for fiscal year 2012-2013] shall be expended by charter schools to fund their educational programs; provided further that the funds shall not be expended for any other purpose; provided further that for fiscal [years] year 2011-2012 [and 2012-2013], any general fund amount that exceeds the product derived from multiplying:

- (1) The actual charter school enrollment count on October 15, 2011, [and October 15, 2012,] as reviewed and verified by the charter school administrative office by November 15, 2011[, and November 15, 2012]; and
- (2) The sum of \$5,867 for fiscal year 2011-2012 [and the sum of \$5,749 for fiscal year 2012-2013];
shall lapse to the [charter schools account within the state treasury;] general fund; provided further that charter schools shall prepare a report that shall include but not be limited to a detailed breakout of the all means of financing budget for the current and next fiscal year and actual expenditures for the last completed fiscal year for each charter school, a report of all other funds expended on behalf of each school, and a report detailing by school:
- (1) The enrollment projections used to submit the current budget request;

- (2) The actual October 15, 2011, and the actual October 15, 2012, enrollment count as reported by each school for the current school year;
- (3) The charter school administrative office's reviewed and verified October 15, 2011, and October 15, 2012, enrollment count; and
- (4) The charter school administrative office's reviewed and verified November 15, 2011, and November 15, 2012, enrollment count;

and provided further that the charter school administrative office shall submit these reports to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular sessions."

- (13) By amending section 20 to read as follows:

"SECTION 20. Provided that of the general fund appropriation for charter schools (EDN 600), the sum of \$2,233,699 or so much thereof as may be necessary for fiscal year 2011-2012 [~~and the sum of \$2,404,556 or so much thereof as may be necessary for fiscal year 2012-2013~~] shall be expended for facility costs; provided further that the amount that exceeds \$228 multiplied by the actual October 15 charter school enrollment count [~~for the current school year~~], as reviewed and verified by the charter school administrative office by November 15, shall lapse to the [~~charter schools account within the state treasury;~~] general fund; provided further that the funds shall be distributed to charter schools based on methodology developed by the charter school administrative office; provided further that charter school administrative office shall prepare a report that shall include but not be limited to a detailed breakout of actual facility-related expenditures for the last completed fiscal year for each charter school and the method of funding; provided further that the report shall include an explanation of the methodology developed by the charter school administrative office to distribute the funds; and provided further that the charter school administrative office shall submit the report to the legislature no later than thirty days prior to the convening of the 2012 [~~and 2013 regular sessions;~~] session."

- (14) By adding a new section to read as follows:

"SECTION 23.3. Provided that the John A. Burns School of Medicine (UOH 110) shall prepare an annual comprehensive report detailing all expenditures of the school; provided further that the report shall be submitted to the legislature no later than September 1 of 2012."

- (15) By adding a new section to read as follows:

"SECTION 29.1. Provided that of the funds appropriated or authorized from the sources of funding indicated below to the departmental administration and budget division (BUF 101) the following sums or so much thereof as may be necessary for fiscal year 2011-2012 and fiscal year 2012-2013 shall be used for the implementation of a directed leave without pay (DLWOP) program and the exemption of certain non-general funds from the DLWOP program for collective bargaining unit 1; provided that this appropriation shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this section.

	FY 2011-2012	FY 2012-2013
<u>General funds</u>	<u>\$ 95,074</u>	<u>\$ 646,002</u>
<u>Special funds</u>	<u>\$2,141,007</u>	<u>\$2,578,096</u>
<u>Federal funds</u>	<u>\$ 239,798</u>	<u>\$ 306,077</u>
<u>Trust</u>	<u>\$ 8,548</u>	<u>\$ 10,116</u>
<u>Interdepartmental transfer funds</u>	<u>\$ 12,289</u>	<u>\$ 14,633</u>
<u>Revolving funds</u>	<u>\$ 26,491</u>	<u>\$ 33,132"</u>

(16) By adding a new section to read as follows:

“SECTION 29.2. Provided that of the funds appropriated or authorized from the sources of funding indicated below to the departmental administration and budget division (BUF 101), the following sums or so much thereof as may be necessary for fiscal year 2011-2012 and fiscal year 2012-2013 shall be used for the implementation of a directed leave without pay (DLWOP) program and the exemption of certain non-general funds from the DLWOP program for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining unit 1; provided that this appropriation shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this section.

	FY 2011-2012	FY 2012-2013
General funds	\$ 337,255	\$ 369,808
Special funds		\$ 1,527
Federal funds		\$ 481
Revolving funds		\$ 4”

(17) By adding a new section to read as follows:

“SECTION 30.1. Provided that of the general fund appropriation for the office of elections (AGS 879), the sum of \$1,090,612 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended by the department of accounting and general services only on contracts and support staff necessary for the reapportionment commission to carry out any orders or judgments of the united states district court pursuant to any litigation against the reapportionment plan adopted by the reapportionment commission on March 8, 2012.”

(18) By amending section 32 to read as follows:

“SECTION 32. Provided that of the general fund appropriations for debt service payments (BUF 721-BUF 728), the following sums specified in fiscal biennium 2011-2013 shall be expended for principal and interest payments on general obligation bonds only as follows:

Program I.D.	FY 2011-2012	FY 2012-2013
BUF 721	\$258,583,782	[\$306,342,481] \$294,929,786
BUF 725	\$222,989,025	[\$264,173,610] \$254,331,904
BUF 728	\$ 82,527,939	[\$ 97,770,299] \$ 94,127,897;

provided further that unrequired balances may be transferred only to retirement benefits payments (BUF 741-BUF 748) and health premium payments (BUF 761-BUF 768); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(19) By amending section 33 to read as follows:

“SECTION 33. Provided that of the general fund appropriations for retirement benefits payments (BUF 741-BUF 748), the following sums specified in fiscal biennium 2011-2013 shall be expended for the state employer’s share of the employees’ retirement system’s pension accumulation only as follows:

<u>Program I.D.</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
BUF 741	\$171,388,684	[\$173,662,109] <u>\$178,947,975</u>
BUF 745	\$181,970,000	[\$184,245,000] <u>\$171,534,825</u>
BUF 748	\$ 81,275,000	[\$ 82,291,000] <u>\$ 85,038,332⁵</u>

~~[Provided]~~ provided that the amounts in BUF 741 accounts for amounts that shall be transferred in pursuant to section 96; provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and health premium payments (BUF 761-BUF 768); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(20) By amending section 34 to read as follows:

“SECTION 34. Provided that of the general fund appropriations for retirement benefits payments (BUF 741-BUF 748), the following sums specified in fiscal biennium 2011-2013 shall be expended for the state employer’s share of the social security/Medicare payment for employees only as follows:

<u>Program I.D.</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
BUF 741	\$ 90,621,637	[\$ 84,840,795] <u>\$ 77,859,502</u>
BUF 745	\$ 98,707,870	[\$ 92,955,000] <u>\$ 81,206,365</u>
BUF 748	\$ 41,981,258	[\$ 40,393,000] <u>\$ 38,124,926;</u>

~~[Provided]~~ provided that the amounts in BUF 741 accounts for amounts that shall be transferred in pursuant to section 96; provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and health premium payments (BUF 761-BUF 768); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(21) By amending section 35 to read as follows:

“SECTION 35. Provided that of the general fund appropriations for health premium payments (BUF 761-BUF 768), the following sums specified in fiscal biennium 2011-2013 shall be expended for the state employer’s share of health premiums for active employees and retirees only as follows:

<u>Program I.D.</u>	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
BUF 761	\$187,687,959	[\$210,386,311] <u>\$200,743,419</u>
BUF 765	\$236,284,465	[\$264,546,608] <u>\$225,126,160</u>
BUF 768	\$ 78,550,089	[\$ 88,092,504] <u>\$ 79,482,140;</u>

~~[Provided]~~ provided that the amounts in BUF 761 accounts for amounts that shall be transferred in pursuant to section 97; provided further that of the amounts in health premiums payments (BUF 761-BUF 768) for fiscal year 2011-2012, \$691,402 in BUF 761; \$763,427 in BUF 765; and \$283,916 in BUF 768 are for costs above the 50/50 contribution for the period of five months from July through November 2011 necessary to implement the United Public Work-

ers Union Unit 1 settlement; provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and retirement benefits payments (BUF 741-BUF 748); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(22) By adding a new section to read as follows:

“SECTION 35.1. Provided that of the general fund appropriations for (BUF 101), the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for a study to determine various methodologies to address issues related to the actuarially accrued unfunded liability of other post-employment benefits of the employer-union health benefits trust fund; and provided further that any unexpended funds shall lapse to the general fund.”

CAPITAL IMPROVEMENT PROGRAM PROVISIONS

SECTION 5. Part IV, Act 164, Session Laws of Hawaii 2011, is amended by amending section 36 to read as follows:

“SECTION 36. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED. The sums of money appropriated or authorized in part II of this Act for capital improvements shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects as such projects are listed in this section. Several related or similar projects may be combined into a single project if such combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F

A. ECONOMIC DEVELOPMENT

BED105 - CREATIVE INDUSTRIES

0.01. CID001 HAWAII FILM STUDIO, VARIOUS IMPROVEMENTS (PHASE I), OAHU

DESIGN AND CONSTRUCTION OF VARIOUS IMPROVEMENTS AT THE HAWAII FILM STUDIO.

DESIGN	345
CONSTRUCTION	1,380
TOTAL FUNDING BED	1,725C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M	FISCAL M
				YEAR O 2011-2012 F	YEAR O 2012-2013 F

BED107 - FOREIGN TRADE ZONE

1.	FOREIGN TRADE ZONE IMPORT-EXPORT STEP-UP INCUBATOR, MAUKA RENOVATION, OAHU				
	DESIGN AND CONSTRUCTION FOR RENOVATION OF MAUKA END OF THE FOREIGN TRADE ZONE WAREHOUSE TO PROVIDE 30,000 SQ. FT. OF ADDITIONAL OFFICE SPACE WITH 40 INDIVIDUAL OFFICES, COMMON CONFERENCE ROOM AND OTHER FACILITIES TO SUPPORT IMPORT-EXPORT RELATED SMALL BUSINESSES. THIS IS A "SHOVEL-READY" PROJECT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
	DESIGN			750	
	CONSTRUCTION			6,750	
	TOTAL FUNDING	BED		4,500D	D
		BED		3,000N	N

BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT

1.01.	BED100	TRANSPACIFIC CABLE PROJECT, STATEWIDE			
		PLANS TO CREATE PRIVATELY-MANAGED SHARED OPEN-ACCESS SUBMARINE FIBER OPTIC CABLE LAND STATIONS, STATEWIDE.			
		PLANS			2,200
		TOTAL FUNDING	BED	C	2,200C

AGR122 - PLANT, PEST, AND DISEASE CONTROL

1.02.	AGRICULTURAL INSPECTION FACILITIES, STATEWIDE				
	PLANS AND DESIGN FOR THE CONSTRUCTION OF AGRICULTURAL INSPECTION FACILITIES AND RELATED INFRASTRUCTURE, STATEWIDE.				
	PLANS				1,000
	DESIGN				1,000
	TOTAL FUNDING	AGR		C	2,000C

AGR141 - AGRICULTURAL RESOURCE MANAGEMENT

2.	SW0602	STATE IRRIGATION SYSTEM RESERVOIR SAFETY IMPROVEMENTS, STATEWIDE			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR STATEWIDE RESERVOIR SAFETY IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		1	1

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		DESIGN		1,000	1
		CONSTRUCTION		2,499	11,498
		TOTAL FUNDING	AGR	2,500 C	9,500 C
			AGR	1,000 N	2,000 N
3.	980002	LOWER HAMAKUA DITCH WATERSHED PROJECT, HAWAII			
		LAND, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE LOWER HAMAKUA DITCH SYSTEM, TOGETHER WITH APPURTENANT WORKS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		2	2
		DESIGN		2	2
		CONSTRUCTION		6,396	2,996
		TOTAL FUNDING	AGR	3,200 C	1,500 C
			AGR	3,200 N	1,500 N
4.	200603	WAIMANALO IRRIGATION SYSTEM IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE WAIMANALO IRRIGATION SYSTEM, OAHU.			
		DESIGN		100	
		CONSTRUCTION		1,750	1,000
		TOTAL FUNDING	AGR	1,850 C	1,000 C
5.	P97002	UPCOUNTRY MAUI WATERSHED PROJECT, MAUI			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF PIPELINE FOR THE UPCOUNTRY MAUI WATERSHED, MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		2	2
		DESIGN		2	2
		CONSTRUCTION		2,996	2,996
		TOTAL FUNDING	AGR	1,500 C	1,500 C
			AGR	1,500 N	1,500 N
6.	201006	KEKAHA DITCH IMPROVEMENTS, KAUAI			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE BLACK PIPE SIPHON, PALI WOODEN FLUME, AND OTHER STRUCTURES.			
		PLANS		100	
		DESIGN		200	
		CONSTRUCTION			1,400
		TOTAL FUNDING	AGR	300 C	1,400 C
7.	200402	MOLOKAI IRRIGATION SYSTEM IMPROVEMENTS, MOLOKAI			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE MOLOKAI IRRIGATION SYSTEM.			
		PLANS		1	
		DESIGN		1	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		CONSTRUCTION		1,248	
		TOTAL FUNDING	AGR	1,250 C	C
8.	201101	KAHUKU AGRICULTURAL PARK SUBDIVISION MISCELLANEOUS IMPROVEMENTS, OAHU			
		CONSTRUCTION OF MISCELLANEOUS IMPROVEMENTS TO THE KAHUKU AGRICULTURAL PARK SUBDIVISION.			
		CONSTRUCTION		110	
		TOTAL FUNDING	AGR	110 C	C
9.		STATE AGRICULTURAL WATER USE DEVELOPMENT PLAN, STATEWIDE			
		PLANS FOR STATE AGRICULTURAL WATER USE DEVELOPMENT PLAN, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		2,350	5,350
		TOTAL FUNDING	AGR	1,000 C	1,000 C
			AGR	1,350 N	4,350 N
10.	201104	WAIHAOLE WATER SYSTEMS IMPROVEMENTS, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO WAIHAOLE WATER SYSTEM, OAHU.			
		PLANS		1	
		DESIGN		499	
		CONSTRUCTION			2,500
		TOTAL FUNDING	AGR	500 C	2,500 C
11.	21103	KA'U IRRIGATION SYSTEM, HAWAII			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE TRANSMISSION DITCH AND FLUME SYSTEM OF THE FORMER KA'U AGRIBUSINESS PLANTATION'S IRRIGATION SYSTEM.			
		PLANS		1	
		DESIGN		499	
		CONSTRUCTION			1,500
		TOTAL FUNDING	AGR	500 C	1,500 C
11.01.		EAST KAUAI IRRIGATION SYSTEM, KAUAI			
		PLANS, DESIGN AND CONSTRUCTION TO UPGRADE AND REPAIR THE EAST KAUAI IRRIGATION SYSTEM.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			73
		TOTAL FUNDING	AGR	C	75 C
11.02.		KAMUELA VACUUM COOLING PLANT, HAWAII			
		CONSTRUCTION AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS TO THE KAMUELA VACUUM COOLING PLANT.			
		CONSTRUCTION			999

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		EQUIPMENT			1
		TOTAL FUNDING	AGR	C	1,000 C
11.03.		WAIMEA IRRIGATION SYSTEM IMPROVEMENTS, HAWAII			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE WAIMEA IRRIGATION SYSTEM.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			38
		TOTAL FUNDING	AGR	C	40 C
11.04.		KUNIA AGRICULTURAL PARK, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR UTILITY, ROAD, GRADING, DRAINAGE AND OTHER IMPROVEMENTS, TO INCLUDE POSSIBLE SUBDIVISION OF PARCEL.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			998
		TOTAL FUNDING	AGR	C	1,000 C
AGR161 - AGRIBUSINESS DEVELOPMENT AND RESEARCH					
12.		HAWAII LIVESTOCK SLAUGHTERHOUSE, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO INSTALL A PHOTOVOLTAIC SYSTEM FOR THE LIVESTOCK SLAUGHTERHOUSE LOCATED IN CAMPBELL INDUSTRIAL PARK.			
		DESIGN		1	
		CONSTRUCTION		748	
		EQUIPMENT		1	
		TOTAL FUNDING	AGR	750 C	C
12.01.		STATE PACKING AND PROCESSING FACILITY, OAHU			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION TO PURCHASE 24 ACRES AND FOR INFRASTRUCTURE IMPROVEMENTS FOR AN AGRICULTURAL PACKING AND PROCESSING FACILITY ON TMK 7-1-02-09.			
		PLANS			1
		LAND			2,000
		DESIGN			600
		CONSTRUCTION			999
		TOTAL FUNDING	AGR	C	3,600 C
12.02.		GALBRAITH LANDS IRRIGATION SYSTEM AT LAKE WILSON, OAHU			
		PLANS AND DESIGN FOR AN IRRIGATION SYSTEM, INCLUDING RESERVOIR, TO PUMP WATER OUT OF THE NORTH FORK OF KAOKONAHUA STREAM TO IRRIGATE THE 1,723 ACRES OF GALBRAITH LANDS.			
		PLANS			1

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		DESIGN			749
		TOTAL FUNDING	AGR	C	750C
AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE					
13.	981921	MISCELLANEOUS HEALTH, SAFETY, CODE, AND OTHER REQUIREMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO ADDRESS HEALTH, SAFETY, CODE, AND OTHER REQUIREMENTS, STATEWIDE.			
		DESIGN		250	100
		CONSTRUCTION		500	400
		TOTAL FUNDING	AGR	750C	500C
LNR153 - COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT					
14.		ANUENUE FISHERIES RESEARCH CENTER MAINTENANCE AND ELECTRICAL UPGRADES, OAHU			
		DESIGN AND CONSTRUCTION FOR MAINTENANCE AND SAFETY UPGRADES AT THE ANUENUE FISHERIES RESEARCH CENTER, OAHU.			
		DESIGN		50	
		CONSTRUCTION			320
		TOTAL FUNDING	LNR	50C	320C
BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION					
15.	TE0012	CHILLER REPLACEMENT WITH ENERGY EFFICIENT TECHNOLOGIES AT MRTC, MAUI			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR REPLACEMENT AND RELOCATION OF THE CHILLER WITH ENERGY EFFICIENT TECHNOLOGIES AT THE MAUI RESEARCH AND TECHNOLOGY CENTER.			
		PLANS		25	
		DESIGN		69	
		CONSTRUCTION		200	
		EQUIPMENT		440	
		TOTAL FUNDING	BED	734B	B
15.01.		HIGH TECHNOLOGY DEVELOPMENT CORPORATION FACILITY, OAHU			
		PLANS AND DESIGN FOR A NEW FACILITY FOR THE HIGH TECHNOLOGY DEVELOPMENT CORPORATION.			
		PLANS			100
		DESIGN			2,900
		TOTAL FUNDING	BED	C	3,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

16. NELHA28 NELHA 40" SEAWATER PIPES UPGRADE, HAWAII

CONSTRUCTION FOR MOORING SYSTEM OF
40" SEAWATER PIPELINES UPGRADE.

CONSTRUCTION

3,500

1,800

TOTAL FUNDING BED

3,500 C

1,800 C

16.01. NELHA ALTERNATIVE ENERGY AND BIOTECHNOLOGY
INCUBATOR, HAWAII

PLANS, DESIGN, AND CONSTRUCTION
FOR RENOVATIONS TO NELHA'S EXISTING
MAIN ADMINISTRATION BUILDING TO
DEVELOP AN ALTERNATIVE ENERGY AND
BIOTECHNOLOGY INCUBATOR.

PLANS

1

DESIGN

1

CONSTRUCTION

998

TOTAL FUNDING BED

D

1,000 D

LNR141 - WATER AND LAND DEVELOPMENT

17. J45 ROCKFALL AND FLOOD MITIGATION, STATEWIDE

PLANS, DESIGN AND CONSTRUCTION FOR
ROCKFALL AND FLOOD MITIGATION AT
VARIOUS LOCATIONS, STATEWIDE. THE
LEGISLATURE FINDS AND DECLARES
THAT THIS APPROPRIATION IS IN THE
PUBLIC INTEREST AND FOR THE PUBLIC'S
HEALTH, SAFETY AND GENERAL WELFARE
OF THE STATE.

PLANS

1

1

DESIGN

1

1

CONSTRUCTION

3,238

3,498

TOTAL FUNDING LNR

3,240 C

3,500 C

18. KOKEE ROAD, WAIMEA, KAUAI

PLANS, DESIGN AND CONSTRUCTION TO
UPGRADE AND RESURFACE KOKEE ROAD
FROM MILE MARKER 15 TO THE KALALAU
LOOKOUT.

PLANS

1

DESIGN

1

CONSTRUCTION

498

TOTAL FUNDING LNR

500 C

C

18.01. J38B STATE WATER PROJECTS PLAN UPDATE, STATEWIDE

PLANS TO UPDATE THE STATE WATER
PROJECTS PLAN, AS MANDATED BY THE
STATE WATER CODE, CHAPTER 174C, HRS.

PLANS

500

TOTAL FUNDING LNR

C

500 C

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY				
19.	HCD001	HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S COMMUNITY DEVELOPMENT DISTRICTS, OAHU		
		PLANS FOR COSTS RELATED TO WAGES AND FRINGE BENEFITS FOR PERMANENT AND NON-PERMANENT PROJECT-FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S COMMUNITY DEVELOPMENT DISTRICTS. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS AS MAY BE AVAILABLE.		
		PLANS	1,855	1,855
		TOTAL FUNDING BED	1,855 C	1,855 C
19.01.	KA008	POHUKAINA STREET MIXED USE TRANSIENT ORIENT DEVELOPMENT PROJECT, KAKAAKO, OAHU		
		PLANS FOR A MIXED USE PROJECT ON POHUKAINA STREET. THIS PROJECT WILL BE USED AS A MODEL FOR TRANSIT ORIENTED DEVELOPMENT (TOD) FOR THE KAKAAKO COMMUNITY DEVELOPMENT DISTRICT (KCCD).		
		PLANS		1,500
		TOTAL FUNDING BED	C	1,500 C
19.02.	KL006	KALAELOA EAST ENERGY CORRIDOR, KALAELOA, OAHU		
		PLANS, DESIGN, AND CONSTRUCTION OF AN ELECTRICAL DISTRIBUTION SYSTEM BETWEEN ROOSEVELT ROAD TO TRIPOLI ROAD. THE PROJECT MAY ALSO INCLUDE THE CONSTRUCTION OF SERVICE ROADWAY TO MAINTAIN CORRIDOR AS REQUIRED BY HECO.		
		PLANS		1
		DESIGN		599
		CONSTRUCTION		2,900
		TOTAL FUNDING BED	C	3,500 C
19.03.		CULTURAL PUBLIC MARKET, OAHU		
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION OF THE CULTURAL PUBLIC MARKET.		
		PLANS		1
		LAND		1
		DESIGN		299
		CONSTRUCTION		2,000
		TOTAL FUNDING BED	C	2,301 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

BED160 - HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

20. HFDC04 RENTAL HOUSING TRUST FUND INFUSION, STATEWIDE

CONSTRUCTION TO PROVIDE AN INFUSION OF FUNDS TO FINANCE ADDITIONAL AFFORDABLE RENTAL HOUSING STATEWIDE.

CONSTRUCTION		10,000		5,000
TOTAL FUNDING	BED	10,000 C		5,000 C

21. HFDC06 SENIOR RESIDENCE AT IWILEI, OAHU

CONSTRUCTION OF 160 LOW INCOME ELDERLY RENTAL APARTMENTS; MAY INCLUDE ADULT DAY CARE CENTER, OFFICE SPACE FOR NON-PROFIT AGENCIES, ON-SITE PARKING, RESIDENT MANAGER'S UNIT AND OFFICE, AND OTHER COMMON AREAS.

CONSTRUCTION		26,000		
TOTAL FUNDING	BED	26,000 C		C

22. P11003 LOW-INCOME HOUSING TAX CREDIT LOANS, STATEWIDE

CONSTRUCTION TO PROVIDE LOW-INCOME HOUSING TAX CREDIT LOANS PURSUANT TO SECTION 201H, HAWAII REVISED STATUTES.

CONSTRUCTION		7,000		
TOTAL FUNDING	BED	7,000 C		C

BED128 - OFFICE OF AEROSPACE

22.01. PACIFIC INTERNATIONAL SPACE CENTER FOR EXPLORATIONS SYSTEMS (PISCES), STATEWIDE

PLANS, DESIGN AND CONSTRUCTION FOR A PISCES FACILITY.

PLANS				1
DESIGN				1
CONSTRUCTION				1,838
TOTAL FUNDING	BED		C	1,840 C

B. EMPLOYMENT

LBR903 - OFFICE OF COMMUNITY SERVICES

1. PACIFIC GATEWAY CENTER, OAHU

PLANS, DESIGN AND CONSTRUCTION TO CONSTRUCT THE KE'EHU COMMUNITY RESOURCE CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS		1	
DESIGN		1	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		CONSTRUCTION		998	
		TOTAL FUNDING	LBR	1,000 C	C
2.		PAPAKOLEA DEVELOPMENT CENTER, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE PAPAKOLEA DEVELOPMENT CENTER, OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		249	
		TOTAL FUNDING	LBR	250 C	C
3.		HAWAII PUBLIC TELEVISION FOUNDATION, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR A NEW BUILDING FOR PBS HAWAII. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		1,998	1,998
		TOTAL FUNDING	LBR	2,000 C	2,000 C
4.		EASTER SEALS HAWAII, MAUI			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE EASTER SEALS HAWAII CAMPUS, MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		948	
		TOTAL FUNDING	LBR	950 C	C
5.		HALE KIPA, INC., OAHU			
		PLANS, DESIGN AND CONSTRUCTION TO CONSTRUCT THE HALE KIPA SERVICES CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,298	
		TOTAL FUNDING	LBR	1,300 C	C
6.		ST. FRANCIS HEALTHCARE FOUNDATION OF HAWAII, OAHU			
		DESIGN AND CONSTRUCTION FOR AN INTERGENERATIONAL CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		999	
		TOTAL FUNDING	LBR	1,000 C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
7.		WAIKIKI COMMUNITY CENTER, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE WAIKIKI COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		229	
		TOTAL FUNDING LBR		230 C	C
8.		SPECIAL OLYMPICS HAWAII, INC, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR A SPORTS AND FITNESS COMPLEX IN KAPOLEI, OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,498	
		TOTAL FUNDING LBR		1,500 C	C
9.		KAUAI ECONOMIC OPPORTUNITY, INC., KAUAI			
		PLANS, DESIGN AND CONSTRUCTION TO REPLACE DAMAGED ROOF. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		78	
		TOTAL FUNDING LBR		80 C	C
9.01.		BOY SCOUTS OF AMERICA - MAUI COUNTY, MAUI			
		CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO SCOUTING FACILITIES, INCLUDING BUT NOT LIMITED TO CAMP MALUHIA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION			1,500
		TOTAL FUNDING LBR		C	1,500 C
9.02.		HONOLULU ACADEMY OF ARTS, TEACHER RESOURCE CENTER, OAHU			
		PLANS FOR A TEACHER RESOURCE ART CENTER ADJACENT TO THE LINEKONA ART CENTER, HONOLULU, OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			120
		TOTAL FUNDING LBR		C	120 C
9.03.		FILIPINO COMMUNITY CENTER, OAHU			
		CONSTRUCTION FOR THE INSTALLATION OF PHOTOVOLTAIC PANELS FOR THE FILIPINO COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		CONSTRUCTION			450
		TOTAL FUNDING	LBR	C	450C
9.04.		HERITAGE HALL, INC., MAUI			
		PLANS, DESIGN, AND CONSTRUCTION FOR HERITAGE HALL FACILITIES IN PAIA, MAUI, TO INCLUDE A MULTIPURPOSE HALL WITH A KITCHEN FOR COMMUNITY USE AND TWO CULTURAL RESOURCE CENTERS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			1,498
		TOTAL FUNDING	LBR	C	1,500C
9.05.		FRIENDS OF SHRINERS HOSPITALS - HONOLULU, INC., OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AND UPGRADES FOR THE SHRINERS HOSPITAL FOR CHILDREN, HONOLULU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			1,498
		TOTAL FUNDING	LBR	C	1,500C
9.06.		COMMUNITY BASED EDUCATION SUPPORT SERVICES, CBESS, HAWAII			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS FOR THE KRESS BUILDING, HILO, HAWAII. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			1,497
		EQUIPMENT			1
		TOTAL FUNDING	LBR	C	1,500C
9.07.		POI DOGS POPOKI, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS FOR POPOKI PLACE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			22
		EQUIPMENT			1
		TOTAL FUNDING	LBR	C	25C

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
9.08.		KAUPAKALUA ROPING CLUB AND YOUTH RODEO, MAUI			
		DESIGN AND CONSTRUCTION OF A CERTIFIED KITCHEN, TO INCLUDE REPAIR, REPLACEMENT AND MAINTENANCE OF KAUPAKALUA ARENA. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN			1
		CONSTRUCTION			249
		TOTAL FUNDING	LBR	C	250C
9.09.		KUALOA HE'EIA ECUMENICAL YOUTH PROJECT, OAHU			
		DESIGN AND CONSTRUCTION TO UPGRADE AND RENOVATE RESTROOMS, STORAGE AND OTHER INFRASTRUCTURE FOR THE KAHALUU MULTI-PURPOSE FACILITY. KEY PROJECT COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN			1
		CONSTRUCTION			299
		TOTAL FUNDING	LBR	C	300C

HMS802 - VOCATIONAL REHABILITATION

10.		HO'OPONO VOCATIONAL REHABILITATION FOR BLIND DIVISION, DEPARTMENT OF HUMAN SERVICES, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR VARIOUS UPGRADES FOR THE HO'OPONO PROGRAM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		494	
		EQUIPMENT		1	
		TOTAL FUNDING	HMS	497C	C
10.01.		HO'OPONO MAINTENANCE PROJECTS, OAHU			
		DESIGN AND CONSTRUCTION TO PROVIDE ELECTRICAL/FIRE ALARM UPGRADE, REPLACEMENT OF ROOF ON SINGLE STORY BUILDING, REPLACEMENT OF A/C UNITS, WATERPROOFING OF EXTERIOR WALLS, REPLACEMENT OF A/C MECHANICAL LEVERS, DAMPERS AND SCREENS, ELEVATOR UPGRADE, EXTERIOR PAINTING AND TERMITE TREATMENT.			
		DESIGN			277
		CONSTRUCTION			901
		TOTAL FUNDING	HMS	C	1,178C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

C. TRANSPORTATION FACILITIES

TRN102 - HONOLULU INTERNATIONAL AIRPORT

1. A23N HONOLULU INTERNATIONAL AIRPORT, RUNWAY 4R IMPROVEMENTS, OAHU
 CONSTRUCTION FOR RUNWAY 4R STRUCTURAL IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES)

CONSTRUCTION		21,400	
TOTAL FUNDING	TRN	15,000 N	N
	TRN	6,400 X	X
2. A23O HONOLULU INTERNATIONAL AIRPORT, RUNWAY 22 CULVERT IMPROVEMENTS, OAHU
 CONSTRUCTION FOR RUNWAY 22 CULVERT IMPROVEMENTS INCLUDING SITE WORK, INSTALLATION OF A DRAINAGE SYSTEM AND BOX CULVERT AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		14,400	16,023
TOTAL FUNDING	TRN	3,600 E	5,233 E
	TRN	10,800 N	10,790 N
3. A23P HONOLULU INTERNATIONAL AIRPORT, TAXIWAY Z STRUCTURAL IMPROVEMENTS, OAHU
 DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO TAXIWAY Z AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES)

DESIGN		5,000	1
CONSTRUCTION			53,499
TOTAL FUNDING	TRN	1,250 E	E
	TRN	3,750 N	37,500 N
	TRN	X	16,000 X
4. A10C HONOLULU INTERNATIONAL AIRPORT, ROADWAY IMPROVEMENTS, OAHU
 CONSTRUCTION TO REPAVE AOOLELE STREET FROM LAGOON DRIVE TO NIMITZ HIGHWAY AND LAGOON DRIVE FROM AOOLELE STREET TO IOLANA STREET.

CONSTRUCTION		7,740	
TOTAL FUNDING	TRN	7,740 E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
5.		HONOLULU INTERNATIONAL AIRPORT, NOISE MONITORING SYSTEM UPGRADE, OAHU			
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE EXISTING NOISE MONITORING SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		35	1
		CONSTRUCTION			349
		TOTAL FUNDING	TRN	35 E	88 E
			TRN	N	262 N
6.	A37F	HONOLULU INTERNATIONAL AIRPORT, LOADING BRIDGE MODERNIZATION, OAHU			
		CONSTRUCTION FOR THE INSTALLATION OF NEW PASSENGER LOADING BRIDGES AND REMOVAL OF EXISTING LOADING BRIDGES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			9,450
		TOTAL FUNDING	TRN	E	2,700 E
			TRN	N	6,750 N
7.	A35D	HONOLULU INTERNATIONAL AIRPORT, OVERSEAS TERMINAL SIGNAGE AND SIDEWALK IMPROVEMENTS, OAHU			
		CONSTRUCTION FOR SIGNAGE AND SIDEWALK IMPROVEMENTS AT THE OVERSEAS TERMINAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		11,300	
		TOTAL FUNDING	TRN	2,825 E	E
			TRN	8,475 N	N
8.	A18A	HONOLULU INTERNATIONAL AIRPORT, NEW RAMP CONTROL OFFICE, OAHU			
		CONSTRUCTION FOR A NEW RAMP CONTROL OFFICE.			
		CONSTRUCTION		685	
		TOTAL FUNDING	TRN	685 E	E
9.	A20C	HONOLULU INTERNATIONAL AIRPORT, WIKI WIKI SHUTTLE STATION IMPROVEMENTS, OAHU			
		CONSTRUCTION FOR IMPROVEMENTS TO THE TWO WIKI WIKI SHUTTLE STATIONS LOCATED ON THE 3RD LEVEL OF THE OVERSEAS TERMINAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		3,852	
		TOTAL FUNDING	TRN	1,152 E	E
			TRN	2,700 N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
10.	A41M	HONOLULU INTERNATIONAL AIRPORT, TERMINAL FACILITY IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION TO RENOVATE THE TERMINAL AREA TO INCORPORATE THE CURRENT THEME OF THE AIRPORT TO CREATE A POSITIVE IMAGE TO PASSENGERS.			
		DESIGN		3,000	1
		CONSTRUCTION			24,399
		TOTAL FUNDING	TRN	3,000E	24,400E
10.01.	A41Q	HONOLULU INTERNATIONAL AIRPORT, NEW MAUKA CONCOURSE IMPROVEMENTS, OAHU			
		CONSTRUCTION FOR A NEW COMMUTER TERMINAL, NEW MAUKA CONCOURSE, AIRCRAFT APRON, TAXIWAYS AND BLAST FENCE NEAR THE INTERISLAND TERMINAL, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION			261,000
		TOTAL FUNDING	TRN	E	261,000E
10.02.	A11E	HONOLULU INTERNATIONAL AIRPORT, ELLIOT STREET SUPPORT FACILITIES, OAHU			
		CONSTRUCTION FOR SUPPORT FACILITIES NEAR ELLIOT STREET INCLUDING MAINTENANCE FACILITIES, CARGO FACILITIES, TAXIWAY G AND L WIDENING AND REALIGNMENT, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION			37,000
		TOTAL FUNDING	TRN	E	37,000E
10.03.	A10D	HONOLULU INTERNATIONAL AIRPORT, OVERSEAS TERMINAL 2ND LEVEL ROADWAY IMPROVEMENTS, OAHU			
		CONSTRUCTION FOR CONCRETE RECONSTRUCTION, EXPANSION JOINT REPLACEMENT, DRAINAGE AND LIGHTING IMPROVEMENTS, AND OTHER RELATED IMPROVEMENTS ON THE 2ND LEVEL ROADWAY FRONTING THE OVERSEAS TERMINAL.			
		CONSTRUCTION			3,000
		TOTAL FUNDING	TRN	E	3,000E
10.04.	A41P	HONOLULU INTERNATIONAL AIRPORT, INTERNATIONAL ARRIVALS BUILDING CEILING REPLACEMENT, OAHU			
		CONSTRUCTION FOR CEILING REPLACEMENT INCLUDING ASBESTOS REMOVAL AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION			16,000
		TOTAL FUNDING	TRN	E	16,000E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
10.05.	A41S	HONOLULU INTERNATIONAL AIRPORT, PROGRAM MANAGEMENT, OAHU			
		DESIGN FOR PROGRAM MANAGEMENT OF THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN			15,000
		TOTAL FUNDING	TRN	E	15,000 E
10.06.		HONOLULU INTERNATIONAL AIRPORT, REPAIR AND MAINTENANCE, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR REPAIR AND MAINTENANCE PROJECTS THROUGHOUT AIRPORT FACILITIES AT HONOLULU INTERNATIONAL AIRPORT, TO INCLUDE COMPLETE REPAIRS TO ALL RESTROOMS.			
		PLANS			2
		DESIGN			3
		CONSTRUCTION			11,995
		TOTAL FUNDING	TRN	E	12,000 E
10.07.	A23Q	HONOLULU INTERNATIONAL AIRPORT, HARDSTAND AT TAXIWAY F, OAHU			
		DESIGN FOR NEW HARDSTANDS AND OTHER RELATED IMPROVEMENTS ADJACENT TO TAXIWAY F.			
		DESIGN			2,000
		TOTAL FUNDING	TRN	E	2,000 E
TRN104 - GENERAL AVIATION					
11.	A71C	KALAELOA AIRPORT, FACILITY IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR KALAELOA AIRPORT FACILITY IMPROVEMENTS INCLUDING LEASE LOTS, APRONS, RUNWAYS, TAXIWAYS AND AVIATION FACILITIES SUCH AS THE CONTROL TOWER, AIRPORT RESCUE FIRE FIGHTING (ARFF) BUILDING, T-HANGER, AVIATION FUEL SYSTEMS AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,600	1
		CONSTRUCTION		8,525	8,524
		TOTAL FUNDING	TRN	2,375 B	775 B
			TRN	7,750 N	7,750 N
11.01.	A71F	KALAELOA AIRPORT, UTILITY CORRIDOR, OAHU			
		CONSTRUCTION OF A UTILITY CORRIDOR AT THE AIRPORT.			
		CONSTRUCTION			500
		TOTAL FUNDING	TRN	E	500 E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

TRN111 - HILO INTERNATIONAL AIRPORT

12. B10M HILO INTERNATIONAL AIRPORT, ARFF FACILITY IMPROVEMENTS, HAWAII

CONSTRUCTION FOR THE RENOVATION OF THE AIRCRAFT RESCUE AND FIRE FIGHTING STATION, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION				9,450
TOTAL FUNDING	TRN	E		900E
	TRN	N		8,550N

13. B10X HILO INTERNATIONAL AIRPORT, LAND ACQUISITION, HAWAII

LAND ACQUISITION OF A 2.847 ACRE PARCEL.

LAND			2,500	
TOTAL FUNDING	TRN		2,500B	B

14. B10B HILO INTERNATIONAL AIRPORT, CARGO BUILDING AND RAMP, HAWAII

CONSTRUCTION FOR ADDITIONAL CARGO FACILITIES WITHIN THE AIRPORT INCLUDING A CARGO RAMP AND OTHER RELATED IMPROVEMENTS.

CONSTRUCTION			14,000	
TOTAL FUNDING	TRN		14,000E	E

TRN114 - KONA INTERNATIONAL AIRPORT AT KE'AHOLE

- 14.01. C03C KONA INTERNATIONAL AIRPORT, RE-ROOF TERMINAL, HAWAII

CONSTRUCTION FOR THE RE-ROOFING OF THE TERMINAL AND OTHER RELATED IMPROVEMENTS.

CONSTRUCTION				10,400
TOTAL FUNDING	TRN	E		10,400E

TRN131 - KAHULUI AIRPORT

15. D04E KAHULUI AIRPORT, RE-ROOF TERMINAL BUILDINGS, MAUI

DESIGN AND CONSTRUCTION FOR THE RE-ROOFING OF THE TERMINAL BUILDINGS AND OTHER RELATED IMPROVEMENTS.

DESIGN			1,500	1
CONSTRUCTION				5,999
TOTAL FUNDING	TRN		1,500B	B
	TRN	E		6,000E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
16.	D04F	KAHULUI AIRPORT, PASSENGER INFORMATION SYSTEM IMPROVEMENTS, MAUI CONSTRUCTION OF PASSENGER INFORMATION SYSTEM IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS. CONSTRUCTION		2,500	
		TOTAL FUNDING	TRN	2,500 E	E
17.	D04S	KAHULUI AIRPORT, LOADING BRIDGE MODERNIZATION, MAUI CONSTRUCTION FOR THE INSTALLATION OF NEW PASSENGER LOADING BRIDGES AND REMOVAL OF EXISTING LOADING BRIDGES. CONSTRUCTION		9,620	
		TOTAL FUNDING	TRN	9,620 E	E
18.	D04D	KAHULUI AIRPORT, TERMINAL IMPROVEMENTS, MAUI DESIGN AND CONSTRUCTION OF TERMINAL IMPROVEMENTS INCLUDING CONFERENCE ROOMS, FAMILY RESTROOMS, HOLDROOMS, SECURITY BADGING OFFICE IMPROVEMENTS, AND OTHER RELATED IMPROVEMENTS. DESIGN		300	
		CONSTRUCTION		2,700	
		TOTAL FUNDING	TRN	3,000 E	E
19.	D04U	KAHULUI AIRPORT, LAND ACQUISITION, MAUI LAND ACQUISITION OF PARCELS NEAR THE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. LAND		15,500	20,000
		TOTAL FUNDING	TRN	B	20,000 B
			TRN	3,875 E	E
			TRN	11,625 N	N
19.01.	D10C	KAHULUI AIRPORT, RUNWAY IMPROVEMENTS, MAUI CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS OF RUNWAY 2-20 AND OTHER RELATED IMPROVEMENTS. CONSTRUCTION			150,000
		TOTAL FUNDING	TRN	E	150,000 E
19.02.	D04R	KAHULUI AIRPORT, FIRE SPRINKLER SYSTEM REPLACEMENT, MAUI CONSTRUCTION FOR THE REPLACEMENT OF THE FIRE SPRINKLER AND FIRE SUPPRESSION SYSTEMS, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. CONSTRUCTION			4,000
		TOTAL FUNDING	TRN	E	4,000 E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
19.03.	D04V	KAHULUI AIRPORT, RESTROOM RECONSTRUCTION, MAUI			
		CONSTRUCTION FOR RENOVATION OF AIRPORT RESTROOMS AT THE AIRPORT.			
		CONSTRUCTION			6,000
		TOTAL FUNDING	TRN	E	6,000 E
19.04.	D04P	KAHULUI AIRPORT, ELEVATOR AND ESCALATOR IMPROVEMENTS, MAUI			
		CONSTRUCTION FOR ELEVATOR AND ESCALATOR REPLACEMENT AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION			6,465
		TOTAL FUNDING	TRN	E	6,465 E
19.05.	D04M	KAHULUI AIRPORT, ACCESS ROAD, MAUI			
		CONSTRUCTION FOR A NEW ACCESS ROAD TO THE AIRPORT FROM HANA HIGHWAY. IMPROVEMENTS INCLUDE SITE WORK, PAVING, ELECTRICAL, DRAINAGE, UTILITIES, AND OTHER RELATED IMPROVEMENTS. (OTHER FUNDS FROM CUSTOMER FACILITY CHARGES.)			
		CONSTRUCTION			50,000
		TOTAL FUNDING	TRN	X	50,000 X
19.06.	D06B	KAHULUI AIRPORT, PARKING LOT EXPANSION, MAUI			
		CONSTRUCTION OF ADDITIONAL PARKING SPACES AND OTHER RELATED IMPROVEMENTS AT THE AIRPORT.			
		CONSTRUCTION			17,000
		TOTAL FUNDING	TRN	E	17,000 E
19.07.	F04T	KAHULUI AIRPORT, ENVIRONMENTAL IMPACT STATEMENT, MAUI			
		PLANS FOR SEPARATE STATE AND FEDERAL ENVIRONMENTAL IMPACT STATEMENTS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS			5,000
		TOTAL FUNDING	TRN	E	1,250 E
			TRN	N	3,750 N
TRN133 - HANA AIRPORT					
19.08.		HANA AIRPORT, MAUI			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO MEET 14 CFR, PART 139 REQUIREMENTS.			
		DESIGN			1,000
		CONSTRUCTION			18,000
		TOTAL FUNDING	TRN	E	19,000 E

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
TRN135 - KAPALUA AIRPORT					
20.		KAPALUA AIRPORT, MAUI			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR SOLAR POWERED RUNWAY LIGHTS AND HARDWARE FOR EMERGENCY USE AT KAPALUA AIRPORT.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			110
		EQUIPMENT			1
		TOTAL FUNDING	TRN	E	113E
TRN141 - MOLOKAI AIRPORT					
20.01.	D55F	MOLOKAI AIRPORT, ELECTRICAL UPGRADES, MOLOKAI			
		DESIGN FOR ELECTRICAL UPGRADES AT THE AIRPORT.			
		DESIGN			150
		TOTAL FUNDING	TRN	E	150E
TRN151 - LANAI AIRPORT					
21.	D70H	LANAI AIRPORT, RUNWAY SAFETY AREA IMPROVEMENTS, LANAI			
		CONSTRUCTION OF THE RUNWAY SAFETY AREA IMPROVEMENTS INCLUDING SITE WORK, INSTALLATION OF A DRAINAGE SYSTEM, CONSTRUCTION OF NEW SERVICE ROAD, RELOCATION OF PERIMETER FENCING AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		35,111	
		TOTAL FUNDING	TRN	2,825B	B
			TRN	32,286N	N
TRN161 - LIHUE AIRPORT					
22.	E10B	LIHUE AIRPORT, AIRFIELD IMPROVEMENTS, KAUAI			
		DESIGN AND CONSTRUCTION FOR AIRFIELD IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		2,400	10
		CONSTRUCTION			21,590
		TOTAL FUNDING	TRN	2,400E	1,080E
			TRN	N	20,520N

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
23.	E03O	LIHUE AIRPORT, AHUKINI LANDFILL RESTORATION, KAUAI			
		CONSTRUCTION FOR THE RESTORATION OF THE AHUKINI LANDFILL AT LIHUE AIRPORT.			
		CONSTRUCTION		2,500	
		TOTAL FUNDING	TRN	2,500 E	E
24.	E03U	LIHUE AIRPORT, TICKET LOBBY AND HOLDROOM IMPROVEMENTS, KAUAI			
		DESIGN AND CONSTRUCTION FOR TICKET LOBBY AND HOLDROOM IMPROVEMENTS.			
		DESIGN		800	10
		CONSTRUCTION			8,290
		TOTAL FUNDING	TRN	800 E	8,300 E
TRN195 - AIRPORTS ADMINISTRATION					
25.		AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM			
		PROJECT STAFF COSTS, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORT DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECT RELATED POSITIONS. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES)			
		PLANS		250	250
		DESIGN		900	900
		CONSTRUCTION		1,400	1,400
		TOTAL FUNDING	TRN	2,450 B	2,450 B
			TRN	100 X	100 X
26.	F05I	AIRFIELD IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR AIRFIELD IMPROVEMENTS AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,000	1,000
		CONSTRUCTION		11,000	11,000
		TOTAL FUNDING	TRN	4,500 B	4,500 B
			TRN	7,500 N	7,500 N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
27.	F08G	MISCELLANEOUS AIRPORT PROJECTS, STATEWIDE			
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS AT VARIOUS STATE AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT.			
		DESIGN		1,000	1,000
		CONSTRUCTION		2,500	2,500
		TOTAL FUNDING TRN		3,500 B	3,500 B
28.	F04J	AIRPORT PLANNING STUDY, STATEWIDE			
		PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, NOISE MONITORING STUDIES, NOISE COMPATIBILITY STUDIES, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS.			
		PLANS		1,000	1,000
		TOTAL FUNDING TRN		1,000 B	1,000 B
29.	F05N	RADIO COMMUNICATIONS IMPROVEMENTS, STATEWIDE			
		CONSTRUCTION FOR NEW DIGITAL RADIO INFRASTRUCTURE UPGRADES INCLUDING ANTENNAS, SYSTEM WATCH TERMINALS, FLASH UPGRADES, WIRING AND NETWORKING DIGITAL RADIO RECORDERS, AND OTHER RELATED IMPROVEMENTS AT STATEWIDE AIRPORTS.			
		CONSTRUCTION			1,400
		TOTAL FUNDING TRN		B	1,400 B
29.01.	F05J	AIRPORT IMPROVEMENTS, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT STATEWIDE AIRPORTS PREVIOUSLY APPROVED BY THE FEDERAL AVIATION ADMINISTRATION FOR PASSENGER FACILITY CHARGE REIMBURSEMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES.)			
		PLANS			550
		LAND			13,290
		DESIGN			5,615
		CONSTRUCTION			16,144
		TOTAL FUNDING TRN		X	35,599 X
29.02.	F08Y	PROGRAM MANAGEMENT, STATEWIDE			
		DESIGN FOR THE PROGRAM MANAGEMENT OF THE MODERNIZATION PROGRAM AT STATEWIDE AIRPORTS.			
		DESIGN			1,000
		TOTAL FUNDING TRN		E	1,000 E

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL YEAR 2011-2012 F	FISCAL YEAR 2012-2013 F
29.03.	F05M	ENERGY SAVINGS PERFORMANCE CONTRACTING, STATEWIDE CONSTRUCTION OF ENERGY SAVINGS RETROFITS AT STATEWIDE AIRPORT FACILITIES.			
		CONSTRUCTION			150,000
		TOTAL FUNDING	TRN	E	150,000 E
29.04.	F05I	RENTAL CAR FACILITY IMPROVEMENTS, STATEWIDE CONSTRUCTION TO PROVIDE CONSOLIDATED CAR RENTAL FACILITY FOR THE RENTAL CAR AGENCIES AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT NEW DAY WORKS PROGRAM. (OTHER FUNDS FROM SHORT-TERM LOAN)			
		CONSTRUCTION			493,000
		TOTAL FUNDING	TRN	E	450,000 E
			TRN	X	43,000 X
29.05.	F08X	ARFF REGIONAL TRAINING FACILITY, STATEWIDE PLANS FOR SITE SELECTION AND BUSINESS PLAN FOR A NEW ARFF REGIONAL TRAINING FACILITY TO INCLUDE ITEMS NECESSARY FOR CURRENT AVIATION AND EMERGENCY RESPONDER NEEDS.			
		PLANS			500
		TOTAL FUNDING	TRN	B	500 B
TRN301 - HONOLULU HARBOR					
29.06.	J42	NDWP-KAPALAMA MILITARY RESERVATION IMPROVEMENTS, HONOLULU HARBOR, OAHU DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF A NEW CONTAINER TERMINAL FACILITY AND OTHER RELATED IMPROVEMENTS. THIS IS A NEW DAY WORK PROJECT.			
		DESIGN			2,000
		CONSTRUCTION			48,000
		TOTAL FUNDING	TRN	E	50,000 E
TRN303 - KALAELOA BARBERS POINT HARBOR					
29.07.	J44	FUEL PIER FACILITY IMPROVEMENTS, KALAELOA BARBERS POINT HARBOR, OAHU PLANS AND DESIGN FOR A NEW FUEL PIER FACILITY AND OTHER RELATED SITE IMPROVEMENTS.			
		PLANS			500
		DESIGN			1,500
		TOTAL FUNDING	TRN	E	2,000 E

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
29.08.	J11	KALAELOA BARBERS POINT HARBOR IMPROVEMENTS, OAHU			
		PLANS AND LAND ACQUISITION FOR KALAELOA BARBERS POINT HARBOR IMPROVEMENTS.			
		PLANS			1,000
		LAND			24,150
		TOTAL FUNDING	TRN	E	25,150E
TRN311 - HILO HARBOR					
30.	L16	MITIGATION AT HILO HARBOR, HAWAII			
		DESIGN AND CONSTRUCTION TO MITIGATE ENVIRONMENTAL MEASURES AT HILO HARBOR.			
		DESIGN		150	
		CONSTRUCTION		600	
		TOTAL FUNDING	TRN	750B	B
30.01.	L12	NDWP-PIER 4 INTERISLAND CARGO TERMINAL, HILO HARBOR, HAWAII			
		LAND ACQUISITION AND CONSTRUCTION FOR AN ADDITIONAL INTERISLAND CARGO TERMINAL AREA INCLUDING A PIER, YARD, ROADWAYS AND UTILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			1,000
		CONSTRUCTION			50,001
		TOTAL FUNDING	TRN	E	51,000E
			TRN	N	1N
30.02.	L10	HILO HARBOR IMPROVEMENTS, HAWAII			
		CONSTRUCTION FOR PIER IMPROVEMENTS AT HILO HARBOR AND OTHER RELATED IMPROVEMENTS.			
		CONSTRUCTION			10,000
		TOTAL FUNDING	TRN	B	10,000B
TRN313 - KAWAIHAE HARBOR					
30.03.	L14	NDWP-PIER 2 TERMINAL IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII			
		DESIGN AND CONSTRUCTION OF TERMINAL IMPROVEMENTS INCLUDING BUT NOT LIMITED TO; PAVING, UTILITIES, AND THE RELOCATION OF THE HARBOR AGENT'S OFFICE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			1,001
		CONSTRUCTION			10,000

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
		TOTAL FUNDING	TRN	E	11,000E
			TRN	N	1N
30.04.	L15	NDWP-PIER 4, KAWAIHAE HARBOR, HAWAII			
		DESIGN OF TERMINAL IMPROVEMENTS ADJACENT TO THE FUTURE PROPOSED PIER 3/4 INTER-ISLAND TERMINAL BARGE FACILITY.			
		DESIGN			500
		TOTAL FUNDING	TRN	E	500E
TRN331 - KAHULUI HARBOR					
31.		KAHULUI HARBOR, MAUI			
		PLANS, DESIGN AND CONSTRUCTION OF A PROTRUDING PIER STRUCTURE DEDICATED TO FUEL TRANSFER.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		48,398	
		TOTAL FUNDING	TRN	48,400E	E
31.01.	M15	NDWP-KAHULUI HARBOR LAND ACQUISITION AND IMPROVEMENTS, MAUI			
		LAND ACQUISITION AND DESIGN FOR IMPROVEMENTS OF THE ACQUIRED LAND INCLUDING DEMOLITION OF EXISTING STRUCTURES, PAVING, UTILITIES, LANDSCAPING, FENCING, AND OTHER RELATED SITEWORK IMPROVEMENTS.			
		LAND			15,000
		DESIGN			2,000
		TOTAL FUNDING	TRN	E	17,000E
31.02.		KAHULUI HARBOR GASOLINE STORAGE TANK, MAUI			
		PLANS AND DESIGN FOR A GASOLINE STORAGE TANK WITH APPROPRIATE TRANSMISSION LINES AT KAHULUI HARBOR.			
		PLANS			1,000
		DESIGN			2,000
		TOTAL FUNDING	TRN	B	3,000B

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
TRN395 - HARBORS ADMINISTRATION					
32.	I21	HMP HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE			
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT HARBOR MODERNIZATION PLAN PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF HARBOR MODERNIZATION PLAN CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.			
		PLANS		1,735	1,735
		TOTAL FUNDING	TRN	1,735 E	1,735 E
33.	I13	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE			
		CONSTRUCTION FOR CONSULTANT SERVICES FOR CONSTRUCTION PROJECTS AT HARBOR FACILITIES STATEWIDE.			
		CONSTRUCTION		1,500	
		TOTAL FUNDING	TRN	1,500 B	B
34.	I06	ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE			
		DESIGN FOR CONSULTANT SERVICES DURING THE DESIGN OF CAPITAL PROJECTS AT HARBOR FACILITIES STATEWIDE.			
		DESIGN		200	200
		TOTAL FUNDING	TRN	200 B	200 B
35.	I20	HMP CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE			
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION OF HARBOR MODERNIZATION PLAN PROJECTS AT HARBOR FACILITIES STATEWIDE.			
		CONSTRUCTION		2,500	5,000
		TOTAL FUNDING	TRN	2,500 E	5,000 E
36.	I01	HARBOR PLANNING, STATEWIDE			
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH, AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.			
		PLANS		1,000	
		TOTAL FUNDING	TRN	1,000 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
37.	I22	HMP PROGRAMMATIC MANAGEMENT SUPPORT, STATEWIDE			
		PLANS FOR CONSULTANT SERVICES DURING PLANS, DESIGN AND CONSTRUCTION OF HARBORS MODERNIZATION PLAN PROJECTS AT HARBOR FACILITIES STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. THIS IS A HARBOR MODERNIZATION PROJECT.			
		PLANS		5,001	
		TOTAL FUNDING	TRN	5,000 E	E
			TRN	1 N	N
38.	I15	SECURITY IMPROVEMENTS AT COMMERCIAL HARBORS, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR SECURITY SYSTEM IMPROVEMENTS AT COMMERCIAL HARBOR FACILITIES, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		2	
		DESIGN		2	
		CONSTRUCTION		5,000	
		TOTAL FUNDING	TRN	1,002 B	B
			TRN	4,002 N	N
39.	I03	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		250	250
		CONSTRUCTION		1,000	1,000
		TOTAL FUNDING	TRN	1,250 B	1,250 B
40.	I05	MISCELLANEOUS IMPROVEMENTS TO PORT FACILITIES, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, MARITIME-INDUSTRIAL FACILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		250	250
		CONSTRUCTION		1,000	1,000
		TOTAL FUNDING	TRN	1,250 B	1,250 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
41.	I19	BOLLARD IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR BOLLARD IMPROVEMENTS, STATEWIDE.			
		DESIGN		500	1
		CONSTRUCTION		800	799
		TOTAL FUNDING TRN		1,300B	800B
41.01.	I23	MITIGATION OF DEBRIS FROM JAPAN'S MARCH 11, 2011 TSUNAMI, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION COSTS FOR THE MITIGATION OF THE ANTICIPATED ARRIVAL OF DEBRIS FROM JAPAN'S MARCH 11, 2011 TSUNAMI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS			1,001
		DESIGN			1,001
		CONSTRUCTION			8,001
		TOTAL FUNDING TRN		B	10,000B
			TRN	N	3N
41.02.	I24	COMMERCIAL HARBOR FACILITY IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION OF SHORE-SIDE AND WATER IMPROVEMENTS FOR COMMERCIAL HARBOR FACILITIES, STATEWIDE.			
		PLANS			250
		DESIGN			500
		CONSTRUCTION			4,250
		TOTAL FUNDING TRN		B	5,000B
TRN501 - OAHU HIGHWAYS					
42.	S344	MISCELLANEOUS PERMANENT BEST MANAGEMENT PRACTICES, OAHU			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR PERMANENT BEST MANAGEMENT PRACTICE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF STRUCTURAL AND NATURAL BEST MANAGEMENT PRACTICES AT VARIOUS LOCATIONS ON OAHU.			
		LAND		150	
		DESIGN		520	
		CONSTRUCTION		30	1,640
		TOTAL FUNDING TRN		700E	1,640E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
43.	S319	PEARL CITY, WAIANAE, AND KANEOHE BASEYARDS WASHDOWN RACKS, OAHU			
		CONSTRUCTION FOR INSTALLING WASHDOWN RACKS TO INCLUDE A WATER RECYCLING UNIT, STEAM PRESSURE WASHERS, AND A CONCRETE PAD FOR COMPLIANCE WITH THE DEPARTMENT OF HEALTH REGULATIONS AND THE CLEAN WATER ACT.			
		CONSTRUCTION		500	
		TOTAL FUNDING	TRN	500E	E
44.	S318	HIGHWAY LIGHTING REPLACEMENT AT VARIOUS LOCATIONS, OAHU			
		DESIGN AND CONSTRUCTION FOR REPLACING AND/OR UPGRADING THE EXISTING HIGHWAY LIGHTING SYSTEM ON STATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			150
		CONSTRUCTION			8,800
		TOTAL FUNDING	TRN	E	1,910E
			TRN	N	7,040N
45.	S301	FARRINGTON HIGHWAY, MAKAHA BRIDGES NO. 3 AND NO. 3A REPLACEMENT, OAHU			
		CONSTRUCTION FOR THE REPLACEMENT OF BRIDGES NO. 3 AND 3A IN THE VICINITY OF MAKAHA BEACH PARK TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		1,700	
		TOTAL FUNDING	TRN	340E	E
			TRN	1,360N	N
46.	S296	KAMEHAMEHA HIGHWAY, KAIPAPAU STREAM BRIDGE REPLACEMENT AND/OR REHABILITATION, OAHU			
		CONSTRUCTION FOR REPLACEMENT AND/OR REHABILITATION OF KAIPAPAU STREAM BRIDGE TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		18,500	
		TOTAL FUNDING	TRN	3,700E	E
			TRN	14,800N	N

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
47.	S317	KAMEHAMEHA HIGHWAY, REHABILITATION OF WAIPILOPILO STREAM BRIDGE, OAHU			
		LAND ACQUISITION FOR REHABILITATION OF A CONCRETE TEE-BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF HAUULA TO INCLUDE BRIDGE RAILINGS, WALKWAYS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		250	5,500
		TOTAL FUNDING	TRN	50 E	1,100 E
			TRN	200 N	4,400 N
48.	S348	FARRINGTON HIGHWAY, ULEHAWA STREAM BRIDGE REHABILITATION, OAHU			
		LAND ACQUISITION AND DESIGN FOR THE REHABILITATION OF ULEHAWA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALITY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		300	
		DESIGN		1,500	
		TOTAL FUNDING	TRN	360 E	E
			TRN	1,440 N	N
49.	S328	KAMEHAMEHA HIGHWAY, REHABILITATION AND/OR REPLACEMENT OF MAKAAU STREAM BRIDGE, OAHU			
		LAND ACQUISITION AND DESIGN FOR THE REHABILITATION AND/OR REPLACEMENT OF MAKAAU STREAM BRIDGE TO INCLUDE BRIDGE RAILINGS, SHOULDERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		250	
		DESIGN		450	
		TOTAL FUNDING	TRN	140 E	E
			TRN	560 N	N
50.	S314	KAMEHAMEHA HIGHWAY, UPPER POAMOHO STREAM BRIDGE REPLACEMENT, OAHU			
		LAND ACQUISITION FOR REPLACEMENT OF A MULTI-GIRDER REINFORCED CONCRETE BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF WAHIAWA TO INCLUDE BRIDGE RAILINGS, PEDESTRIAN WALKWAYS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		400	
		TOTAL FUNDING	TRN	80 E	E
			TRN	320 N	N

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M	FISCAL M
				YEAR O	YEAR O
				2011-2012 F	2012-2013 F
51.	S315	KAMEHAMEHA HIGHWAY, REHABILITATION AND/OR REPLACEMENT OF LAIELOA STREAM BRIDGE, OAHU			
		CONSTRUCTION FOR REHABILITATION AND/OR REPLACEMENT OF A CONCRETE SLAB BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF LAIE TO INCLUDE BRIDGE RAILINGS, WALKWAYS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		8,600	
		TOTAL FUNDING	TRN	1,720 E	E
			TRN	6,880 N	N
52.	S346	INTERSTATE ROUTE H-1, KAPALAMA CANAL BRIDGE REHABILITATION, OAHU			
		DESIGN FOR THE REHABILITATION OF KAPALAMA CANAL BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		800	
		TOTAL FUNDING	TRN	160 E	E
			TRN	640 N	N
53.	S349	KAMEHAMEHA HIGHWAY, WAIALEE STREAM BRIDGE REPLACEMENT, OAHU			
		LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF WAIALEE STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			499
		DESIGN		890	1
		TOTAL FUNDING	TRN	178 E	100 E
			TRN	712 N	400 N
54.	S284	FREEWAY DESTINATION SIGN UPGRADE/REPLACEMENT, OAHU			
		DESIGN AND CONSTRUCTION FOR REPLACING AND/OR UPGRADING THE EXISTING FREEWAY DESTINATION SIGNS AND SIGN SUPPORT STRUCTURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			350
		CONSTRUCTION			4,250
		TOTAL FUNDING	TRN	E	920 E
			TRN	N	3,680 N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M	FISCAL M
				YEAR O 2011-2012 F	YEAR O 2012-2013 F
55.	S313	INTERSTATE ROUTE H-1, ADDITION AND/OR MOD. OF FREEWAY ACCS. MAKAKILO TO PALAILAI IC, OAHU			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION TO IMPROVE AND/OR MODIFY THE MAKAKILO AND PALAILAI INTERCHANGES AND CONSTRUCT A NEW INTERCHANGE (KAPOLEI INTERCHANGE). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			408
		DESIGN			100
		CONSTRUCTION		23,900	400
		TOTAL FUNDING	TRN	5,090 E	91 E
			TRN	18,810 N	817 N
56.		INTERSTATE ROUTE H-3, JUNCTION AT H-1 TO KANEOHE MARINE CORPS AIR STATION, OAHU			
		DESIGN AND CONSTRUCTION FOR A DIVIDED HIGHWAY FROM JUNCTION H-1 TO KANEOHE MARINE CORPS AIR STATION, OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		25	335
		CONSTRUCTION		225	3,395
		TOTAL FUNDING	TRN	25 E	373 E
			TRN	225 N	3,357 N
57.		FLOOD MITIGATION, LUALUALEI VALLEY AND FARRINGTON HIGHWAY, OAHU			
		DESIGN AND CONSTRUCTION FOR FLOOD MITIGATION EFFORTS ON FARRINGTON HIGHWAY BETWEEN MAILI AND NANAKULI, OAHU.			
		DESIGN		500	
		CONSTRUCTION		7,500	
		TOTAL FUNDING	TRN	8,000 E	E
58.		KAHEKILI AND KAMEHAMEHA HIGHWAYS, OAHU			
		DESIGN AND CONSTRUCTION OF MULTI-USE PATHS ALONG KAHEKILI BEGINNING AT THE INTERSECTION WITH HAIKU ROAD, ALONG KAMEHAMEHA HIGHWAY UP TO WAIHAOLE VALLEY.			
		DESIGN		300	
		CONSTRUCTION		1,300	
		TOTAL FUNDING	TRN	1,600 E	E
59.		KALANIANAOLE HIGHWAY, OAHU			
		PLANS, DESIGN AND CONSTRUCTION TO UPGRADE CROSSWALK.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		298	
		TOTAL FUNDING	TRN	300 E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
60.		FARRINGTON HIGHWAY, LAHILAHI STREET, OAHU			
		DESIGN AND CONSTRUCTION FOR FLOOD MITIGATION SYSTEM.			
		DESIGN		200	
		CONSTRUCTION		800	
		TOTAL FUNDING	TRN	1,000 E	E
61.		KAMEHAMEHA HIGHWAY, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO KAMEHAMEHA HIGHWAY, INCLUDING SIGNAL OPERATION AND MONITORING IMPROVEMENTS PHASE II, A FEASIBILITY STUDY FOR BOTTLENECK INTERSECTIONS, UTILITY UNDERGROUNDING, PEARL HARBOR HISTORIC SITE GATEWAY PROJECT, AND HARS DEMONSTRATION PROGRAM.			
		DESIGN		50	
		CONSTRUCTION		200	
		TOTAL FUNDING	TRN	250 E	E
62.		KAMEHAMEHA HIGHWAY AND KAHEKILI HIGHWAY, OAHU			
		DESIGN AND CONSTRUCTION FOR CLEAN UP, TREE TRIMMING, INSTALLATION OF CAMERAS, BEAUTIFICATION, AND PLANTING.			
		DESIGN			110
		CONSTRUCTION			1,000
		TOTAL FUNDING	TRN	E	1,110 E
62.01.	SP0603	FARRINGTON HIGHWAY IMPROVEMENTS BETWEEN HONOKAI HALE AND HAKIMO ROAD, OAHU			
		CONSTRUCTION FOR IMPROVEMENTS ALONG FARRINGTON HIGHWAY FOR ALTERNATIVE CONGESTION RELIEF AND/OR SAFETY IMPROVEMENTS ALONG FARRINGTON HIGHWAY BETWEEN HONOKAI HALE AND HAKIMO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			7,500
		TOTAL FUNDING	TRN	E	1,500 E
			TRN	N	6,000 N
62.02.	S074	OAHU BIKEWAYS, OAHU			
		LAND ACQUISITION FOR A MULTI-USE PATH FROM THE VICINITY OF WAIPIO POINT ACCESS ROAD TO LUALUALEI NAVAL ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			100
		TOTAL FUNDING	TRN	E	20 E
			TRN	N	80 N

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
62.03.	S297	KAMEHAMEHA HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, OAHU			
		CONSTRUCTION FOR REPLACEMENT OF THE EXISTING BRIDGE ON KAMEHAMEHA HIGHWAY AT KAWELA STREAM WITH A LARGER BRIDGE INCLUDING IMPROVEMENTS TO THE ROADWAY APPROACHES, SEISMIC UPGRADES, TEMPORARY DETOUR ROAD, AND UTILITY RELOCATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			925
		TOTAL FUNDING	TRN	E	185 E
			TRN	N	740 N
62.04.	S350	INTERSTATE ROUTE H-1, AIRPORT VIADUCT IMPS, VIC OF VALKENBURGH ST TO MIDDLE ST, OAHU			
		CONSTRUCTION FOR IMPROVEMENTS TO THE AIRPORT VIADUCT, INCLUDING DECK REPAIRS AND SEALING, AND GUARDRAIL AND PLANTER BOX REPAIRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			25,000
		TOTAL FUNDING	TRN	E	2,500 E
			TRN	N	22,500 N
62.05.	S239	FREEWAY MANAGEMENT SYSTEM, OAHU			
		DESIGN AND CONSTRUCTION FOR A FREEWAY MANAGEMENT SYSTEM, INCLUDING INTELLIGENT TRANSPORTATION SYSTEMS TECHNOLOGIES AND INTERAGENCY COORDINATION TO MONITOR AND MANAGE TRAFFIC OPERATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			1,900
		CONSTRUCTION			1,850
		TOTAL FUNDING	TRN	E	750 E
			TRN	N	3,000 N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
62.06.	S270	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS FACILITIES, OAHU			
		CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS FOR MORE EFFICIENT TRAFFIC FLOW.			
		CONSTRUCTION			750
		TOTAL FUNDING	TRN	E	750 E
62.07.	S324	FARRINGTON HIGHWAY, REPLACEMENT OF MAIPALAOA BRIDGE, OAHU			
		CONSTRUCTION FOR REPLACEMENT OF A PRE-STRESSED TEE-BEAM BRIDGE ON FARRINGTON HIGHWAY IN THE VICINITY OF MAILI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			11,000
		TOTAL FUNDING	TRN	E	2,200 E
			TRN	N	8,800 N
62.08.	S334	VINEYARD BOULEVARD IMPR. AT LUSITANA ST., VICINITY OF QUEEN'S MEDICAL CENTER, OAHU			
		CONSTRUCTION OF A RIGHT TURN LANE FROM LUSITANA STREET ONTO VINEYARD BOULEVARD TO PROVIDE EASTBOUND FREEWAY ACCESS FROM THE QUEEN'S MEDICAL CENTER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			1,000
		TOTAL FUNDING	TRN	R	1,000 R
62.09.		WIDENING AND IMPROVING KAHEKILI HIGHWAY, OAHU			
		PLANS AND DESIGN FOR WIDENING AND IMPROVING KAHEKILI HIGHWAY.			
		PLANS			750
		DESIGN			750
		TOTAL FUNDING	TRN	E	1,500 E
62.10.		WAIKANE VALLEY GUARDRAIL IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR GUARDRAIL IMPROVEMENTS AND STREAM PROTECTION IN WAIKANE VALLEY.			
		DESIGN			5
		CONSTRUCTION			295
		TOTAL FUNDING	TRN	E	300 E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
62.11.	SP0905	KUALAKAI PARKWAY EXTENSION, KAPOLEI PARKWAY TO ROOSEVELT AVENUE, OAHU			
		CONSTRUCTION FOR AN APPROXIMATE 1/2 MILE EXTENSION BETWEEN KAPOLEI PARKWAY AND ROOSEVELT AVENUE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			15,000
		TOTAL FUNDING	TRN	E	3,000E
			TRN	N	12,000N
62.12.		KAMEHAMEHA HIGHWAY SIDEWALKS, OAHU			
		DESIGN AND CONSTRUCTION OF SIDEWALKS ALONG BOTH SIDES OF KAMEHAMEHA HIGHWAY FROM MEHEULA PARKWAY TO LANIKUHANA AVENUE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			300
		CONSTRUCTION			2,700
		TOTAL FUNDING	TRN	E	3,000E
62.13.		KAMEHAMEHA HIGHWAY WIDENING, LANIKUHANA AVENUE TO KA UKA BOULEVARD, OAHU			
		DESIGN AND CONSTRUCTION FOR WIDENING KAMEHAMEHA HIGHWAY TO A FOUR-LANE DIVIDED FACILITY WITH SHOULDERS FOR BICYCLES AND DISABLED VEHICLES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			4,300
		CONSTRUCTION			3,000
		TOTAL FUNDING	TRN	E	7,300E
62.14.		KAMEHAMEHA HIGHWAY, WAIPAHU STREET TO WAPIO ² UKA BOULEVARD, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF GRAFFITI RESISTANT WALL MATERIALS TO MATCH EXISTING WALL COVERINGS.			
		DESIGN			500
		CONSTRUCTION			4,500
		TOTAL FUNDING	TRN	E	5,000E
62.15.	SP1108	ALTERNATIVE ACCESS AND TRAFFIC MITIGATION STUDY FROM MILILANI ON TO THE H-2 FREEWAY, OAHU			
		PLANS FOR AN ALTERNATE ACCESS OR MODIFICATION OF EXISTING ACCESS, AS WELL AS TRAFFIC MITIGATION MEASURES TO PROVIDE ACCESS FROM MILILANI ON TO THE H-2 FREEWAY.			
		PLANS		350	
		TOTAL FUNDING	TRN	350E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
63.	T119	WAIMEA AND HILO BASEYARDS IMPROVEMENTS, HAWAII			
		CONSTRUCTION TO PROVIDE WASTEWATER IMPROVEMENTS FOR THE WAIMEA BASEYARD AND A SEPTIC TANK SYSTEM TO THE HILO BASEYARD NECESSARY TO MEET DEPARTMENT OF HEALTH COMPLIANCE AND ENVIRONMENTAL PROTECTION AGENCY (EPA) COMPLIANCE.			
		CONSTRUCTION		250	
		TOTAL FUNDING	TRN	250E	E
64.	T145	ROCKFALL PROTECTION/SLOPE STABILIZATION AT VARIOUS LOCATIONS, HAWAII			
		LAND ACQUISITION AND CONSTRUCTION FOR ROCKFALL/SLOPE PROTECTION, AND SLOPE AND/OR ROADWAY STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS ON HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		125	
		CONSTRUCTION		3,000	
		TOTAL FUNDING	TRN	625 E	E
			TRN	2,500N	N
65.	T110	HAWAII BELT ROAD ROCKFALL PROTECTION AT MAULUA, LAUPAHOEHOE, AND KAAWALII, HAWAII			
		DESIGN AND CONSTRUCTION FOR SLOPE PROTECTION ALONG ROUTE 19, HAWAII BELT ROAD IN THE VICINITY OF MAULUA GULCH, LAUPAHOEHOE GULCH, AND KAAWALII GULCH. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			19,499
		CONSTRUCTION			1
		TOTAL FUNDING	TRN	E	3,900 E
			TRN	N	15,600 N
66.	T146	HAWAII BELT ROAD, REHABILITATION OF UMAUMA STREAM BRIDGE, HAWAII			
		CONSTRUCTION FOR THE REHABILITATION OF UMAUMA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		20,000	
		TOTAL FUNDING	TRN	4,000 E	E
			TRN	16,000 N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
67.	T144	HAWAII BELT ROAD, REPLACEMENT OF PAHOEHOE STREAM BRIDGE, HAWAII			
		LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF A CONCRETE ARCH-DECK BRIDGE ON HAWAII BELT ROAD (ROUTE 19) ON THE BIG ISLAND IN THE VICINITY OF PAPAIKOU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			1,100
		DESIGN		50	
		TOTAL FUNDING	TRN	10E	220E
			TRN	40N	880N
68.	T147	HAWAII BELT ROAD, KAALAU BRIDGE REPLACEMENT, HAWAII			
		LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF KAALAU BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			600
		DESIGN			1,200
		TOTAL FUNDING	TRN	E	360E
			TRN	N	1,440N
69.	T148	HAWAII BELT ROAD, KAPEHU BRIDGE REPLACEMENT, HAWAII			
		LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF KAPEHU BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			700
		DESIGN			1,200
		TOTAL FUNDING	TRN	E	380E
			TRN	N	1,520N
70.	T126	KUAKINI HWY ROADWAY AND DRAINAGE IMPROVEMENTS, VICINITY OF KAMEHAMEHA III ROAD, HAWAII			
		CONSTRUCTION FOR BUILDING UP PAVEMENT CROSS SLOPE TO IMPROVE DRAINAGE AND OTHER INCIDENTAL IMPROVEMENTS.			
		CONSTRUCTION		3,400	
		TOTAL FUNDING	TRN	3,400E	E
71.	T149	KOHALA MOUNTAIN ROAD DRAINAGE IMPROVEMENTS, HAWAII			
		CONSTRUCTION FOR DRAINAGE IMPROVEMENTS IN THE VICINITY OF M.P. 10.60. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			3,600
		TOTAL FUNDING	TRN	E	3,600E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
72.	T136	HAWAII BELT ROAD DRAINAGE IMPROVEMENTS, VICINITY OF HAKALAU BRIDGE, HAWAII			
		CONSTRUCTION FOR DRAINAGE IMPROVEMENTS, INCLUDING INSTALLING A DRAINAGE SPILLWAY AND BOX CULVERTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		2,000	400
		TOTAL FUNDING TRN		400 E	80 E
		TRN		1,600 N	320 N
73.	T132	VOLCANO ROAD INTERSECTION AND DRAINAGE IMPROVEMENTS, VICINITY OF KULANI ROAD, HAWAII			
		CONSTRUCTION FOR LEFT TURN LANES AND DRAINAGE IMPROVEMENTS AT THE KULANI ROAD INTERSECTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		2,800	
		TOTAL FUNDING TRN		560 E	E
		TRN		2,240 N	N
73.01.	T137	VOLCANO ROAD WIDENING, KEAAU TO PAAHANA, HAWAII			
		CONSTRUCTION FOR THE WIDENING OF VOLCANO ROAD FROM KEAAU TO PAAHANA INCLUDING INSTALLATION OF SIGNS, PAVEMENT MARKINGS, DRAINAGE, GUARDRAILS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			4,000
		TOTAL FUNDING TRN		E	800 E
		TRN		N	3,200 N
74.	T118	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, HAWAII			
		CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.			
		CONSTRUCTION		200	
		TOTAL FUNDING TRN		200 E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
75.	T141	QUEEN KAAHUMANU HIGHWAY IMPROVEMENTS, KEAHOLE AIRPORT TO KAWAIIHAE HARBOR, HAWAII			
		PLANS FOR IMPROVEMENTS TO QUEEN KAAHUMANU HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS			400
		TOTAL FUNDING	TRN	E	80 E
			TRN	N	320 N
76.		KUPULAU ROAD EXTENSION, HAWAII			
		PLANS, DESIGN AND CONSTRUCTION TO REDUCE CONGESTION OF TRAFFIC ON KOMOHANA STREET.			
		PLANS		250	
		DESIGN		500	
		CONSTRUCTION		2,000	
		TOTAL FUNDING	TRN	2,750 E	E
76.01.	T127	KEAAU-PAHOA RD SHOULDER LN CONVERSION, KEAAU BYPASS RD. TO VIC. OF SHOWER DR., HAWAII			
		CONSTRUCTION FOR RECONSTRUCTING AND WIDENING THE EXISTING SHOULDER AND CONSTRUCTING NEW SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			2,000
		TOTAL FUNDING	TRN	E	400 E
			TRN	N	1,600 N
76.02.	T077	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, HAWAII			
		DESIGN FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE END POSTS AND CRASH ATTENUATOR, AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			170
		TOTAL FUNDING	TRN	E	170 E
TRN531 - MAUI HIGHWAYS					
77.	V075	HANA HIGHWAY ROCKFALL MITIGATION, HUELO TO HANA, MAUI			
		CONSTRUCTION TO MITIGATE ROCKFALLS AND POTENTIAL LANDSLIDE AREAS ALONG THE SLOPES OF ROUTE 360 HANA HIGHWAY AT VARIOUS LOCATIONS.			
		CONSTRUCTION		4,382	
		TOTAL FUNDING	TRN	4,382 E	E

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
78.	W0008	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MOLOKAI			
		DESIGN AND CONSTRUCTION TO BUILD ASPHALT CONCRETE PAVED SHOULDERS AND INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		75	
		CONSTRUCTION		750	750
		TOTAL FUNDING	TRN	225 E	150 E
			TRN	600 N	600 N
79.	V084	HANA HIGHWAY IMPROVEMENTS, HUELO TO HANA, MAUI			
		CONSTRUCTION FOR IMPROVING, UPGRADING, AND/OR REPAIRING ROADWAYS, BRIDGES, WALLS, DRAINAGE STRUCTURES, GUARDRAILS, AND OTHER FACILITIES ON ROUTE 360 HANA HIGHWAY.			
		CONSTRUCTION		840	1,500
		TOTAL FUNDING	TRN	840 E	1,500 E
80.	V094	HONOAPIILANI HIGHWAY, REPLACEMENT AND/OR REHABILITATION OF HONOLUA BRIDGE, MAUI			
		LAND ACQUISITION FOR REPLACEMENT OF A CONCRETE TEE-BEAM BRIDGE ON HONOAPIILANI HIGHWAY IN THE VICINITY OF HONOLUA BAY TO INCLUDE BRIDGE RAILINGS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		425	
		TOTAL FUNDING	TRN	85 E	E
			TRN	340 N	N
81.	W014	KAMEHAMEHA V HIGHWAY, DRAINAGE IMPROVEMENTS, VICINITY OF MILE POST 12.5, MOLOKAI			
		CONSTRUCTION TO UPGRADE THE EXISTING CULVERT, OTHER DRAINAGE FACILITIES, SHOULDERS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 12.5.			
		CONSTRUCTION		450	
		TOTAL FUNDING	TRN	450 E	E
82.	V099	HANA HIGHWAY, DRAINAGE IMPROVEMENTS, VICINITY OF HOOLAWA BRIDGE, MAUI			
		DESIGN AND CONSTRUCTION TO REGRADE THE ROADWAY TO REDIRECT RUNOFF FROM THE TRAVEL LANES AND SHOULDERS AND TOWARDS THE EXISTING CULVERT.			
		DESIGN		80	
		CONSTRUCTION			1,200
		TOTAL FUNDING	TRN	80 E	1,200 E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
83.	V098	KAHEKILI HIGHWAY DRAINAGE IMPROVEMENTS AT WAIHEE TOWN, MAUI			
		CONSTRUCTION OF A DRAINAGE FACILITY ON KAHEKILI HIGHWAY NEAR WAIHEE TOWN.			
		CONSTRUCTION		75	
		TOTAL FUNDING	TRN	75 E	E
84.	V103	HANA HIGHWAY BRIDGE PRESERVATION PLAN, MAUI			
		PLANS FOR DEVELOPING A BRIDGE PRESERVATION PLAN FOR HANA HIGHWAY IN THE VICINITY OF THE HANA PRESERVATION DISTRICT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AND ² FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1,600	
		TOTAL FUNDING	TRN	320 E	E
			TRN	1,280 N	N
85.	V107	KAHULUI BASEYARD IMPROVEMENTS, MAUI			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR KAHULUI BASEYARD IMPROVEMENTS.			
		DESIGN		75	
		CONSTRUCTION			700
		EQUIPMENT			100
		TOTAL FUNDING	TRN	75 E	800 E
86.	V051	HONOAPIILANI HIGHWAY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO LAUNIUPOKO, MAUI			
		LAND ACQUISITION AND CONSTRUCTION FOR A NEW ALIGNMENT OF HONOAPIILANI HIGHWAY FROM LAHAINALUNA ROAD TO THE VICINITY OF LAUNIUPOKO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			50
		CONSTRUCTION		32,000	
		TOTAL FUNDING	TRN	13,000 E	10 E
			TRN	17,500 N	40 N
			TRN	1,500 S	S
87.	V100	HANA HIGHWAY IMPROVEMENTS, VICINITY OF MILEPOST 28.1, MAUI			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR ROADWAY WIDENING AND/OR REALIGNMENT AND OTHER IMPROVEMENTS ALONG HANA HIGHWAY IN THE VICINITY OF MILEPOST 28.1.			
		LAND		50	
		DESIGN		105	
		CONSTRUCTION			675
		TOTAL FUNDING	TRN	155 E	675 E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
88.	V089	HANA HIGHWAY IMPROVEMENTS, UAKEA ROAD TO KEAWA PLACE, MAUI			
		CONSTRUCTION FOR WIDENING THE EXISTING ROADWAY AND CONSTRUCT SAFETY IMPROVEMENTS.			
		CONSTRUCTION		290	
		TOTAL FUNDING	TRN	290 E	E
89.	V083	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, MAUI			
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.			
		DESIGN		125	
		CONSTRUCTION		2,690	1,000
		TOTAL FUNDING	TRN	2,815 E	1,000 E
90.	V063	KAHULUI AIRPORT ACCESS ROAD, MAUI			
		CONSTRUCTION FOR A PORTION OF THE NEW ACCESS ROAD TO KAHULUI AIRPORT FROM THE VICINITY OF PUUNENE AVENUE TO HANA HIGHWAY. INCLUDES AN AT-GRADE INTERSECTION AT HANA HIGHWAY, STRIPING, LANDSCAPING, DRAINAGE, HIGHWAY LIGHTING, UTILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			9,525
		TOTAL FUNDING	TRN	E	1,905 E
			TRN	N	7,620 N
91.		HALEAKALA HIGHWAY IMPROVEMENTS, MAUI			
		CONSTRUCTION TO INSTALL RIGHT TURN LANE ON WEST-BOUND HALEAKALA HIGHWAY, INSTALL WALKWAYS AND PAVED SHOULDERS AND/OR SIDEWALKS FROM INTERSECTION TO KING KEKAULIKE HIGH SCHOOL ENTRANCES, AND TO MAKE TRAFFIC SIGNAL IMPROVEMENTS, SIGNAGE, MARKINGS, AND OTHER RELATED IMPROVEMENTS.			
		CONSTRUCTION		1,500	
		TOTAL FUNDING	TRN	1,500 E	E

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
TRN561 - KAUAI HIGHWAYS					
92.	X051	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, KAUAI			
		CONSTRUCTION FOR INSTALLING AND/OR UPGRADING OF GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPOSTS AND CRASH ATTENUATORS; AND RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			400
		TOTAL FUNDING	TRN	E	80E
			TRN	N	320N
93.	X134	KUHIO HIGHWAY, SLOPE STABILIZATION AT LUMAHAI HILLSIDE, KAUAI			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR SLOPE STABILIZATION AT LUMAHAI HILLSIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		150	
		DESIGN		400	
		CONSTRUCTION			2,000
		TOTAL FUNDING	TRN	550E	400E
			TRN	N	1,600N
94.	X128	KUHIO HIGHWAY, REPLACEMENT OF WAIOLI, WAIPA, AND WAIKOKO STREAM BRIDGES, KAUAI			
		LAND ACQUISITION FOR THE REPLACEMENT OF WAIOLI STREAM BRIDGE, WAIPA STREAM BRIDGE, AND WAIKOKO STREAM BRIDGE ON KUHIO HIGHWAY, ROUTE 560. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			250
		TOTAL FUNDING	TRN	E	50E
			TRN	N	200N
95.	X127	KAPULE HWY/RICE ST/WAAPA RD IMPROVEMENTS AND STRENGTHENING/WIDENING OF NAWILIWILI BRIDGE, KAUAI			
		LAND ACQUISITION FOR THE IMPROVEMENT OF KAPULE HIGHWAY, RICE STREET AND WAAPA ROAD; AND STRENGTHENING/WIDENING OF NAWILIWILI BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			150

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		TOTAL FUNDING	TRN	E	30 E
			TRN	N	120 N
96.	X124	KUHIO HIGHWAY, KAPAIA BRIDGE REPLACEMENT, KAUAI			
		CONSTRUCTION FOR REPLACEMENT OF A MULTI-TEE BEAM REINFORCED CONCRETE GIRDER BRIDGE ON KUHIO HIGHWAY IN THE VICINITY OF KAPAIA TO INCLUDE PEDESTRIAN WALKWAYS, BRIDGE RAILINGS AND APPROACHES, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			8,650
		TOTAL FUNDING	TRN	E	1,730 E
			TRN	N	6,920 N
97.	X123	WAIMEA CANYON DRIVE/KOKEE ROAD IMPROVEMENTS, MILE POST 0 TO MILE POST 14, KAUAI			
		CONSTRUCTION FOR PAVED SHOULDERS, INSTALLING GUARDRAILS, PAVEMENT MARKINGS AND SIGNS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 0 TO MILE POST 14. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		6,000	4,800
		TOTAL FUNDING	TRN	1,200 E	4,800 E
			TRN	4,800 N	N
98.	X007	KUHIO HIGHWAY IMPROVEMENTS, HANAMAULU TO KAPAA, KAUAI			
		PLANS AND CONSTRUCTION FOR A NEW KAPAA BYPASS AND/OR WIDEN SECTIONS OF KUHIO HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1,000	
		CONSTRUCTION		22,900	
		TOTAL FUNDING	TRN	7,500 E	E
			TRN	16,400 N	N
99.	X006	KAUMUALII HIGHWAY IMPROVEMENTS, LIHUE TO WEST OF MALUHIA ROAD, KAUAI			
		CONSTRUCTION FOR WIDENING OF KAUMUALII HIGHWAY, LIHUE TO WEST OF MALUHIA ROAD, FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		6,900	
		TOTAL FUNDING	TRN	800 E	E
			TRN	1,600 N	N
			TRN	4,500 S	S

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
100.	X121	KUHIO HIGHWAY, REPLACEMENT OF WAINIHA BRIDGES NOS. 1, 2, AND 3, KAUAI			
		DESIGN FOR REPLACEMENT OF WAINIHA BRIDGES NOS. 1, 2, AND 3. PROJECT WILL CONSTRUCT BRIDGE APPROACHES, DETOUR ROADS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,000	
		TOTAL FUNDING	TRN	1,000 E	E
101.	X112	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS, KAUAI			
		CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.			
		CONSTRUCTION		2,380	2,500
		TOTAL FUNDING	TRN	2,380 E	2,500 E
102.	X135	NAWILIWILI ROAD IMPROVEMENTS, KANANI STREET TO KAUMUALII HIGHWAY, KAUAI			
		DESIGN AND CONSTRUCTION FOR NAWILIWILI ROAD IMPROVEMENTS, INCLUDING PAVEMENT RECONSTRUCTION, SIDEWALKS, AND TRAFFIC SIGNALS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		400	
		CONSTRUCTION			7,820
		TOTAL FUNDING	TRN	80 E	1,820 E
			TRN	320 N	6,000 N
103.		ROADWAY RECONSTRUCTION, MILE MARKER 18 TO KALALAU LOOKOUT, KAUAI			
		DESIGN AND CONSTRUCTION TO RENOVATE AND RESURFACE ROADWAY, INCLUDING DRAINAGE IMPROVEMENTS.			
		DESIGN			800
		CONSTRUCTION			7,200
		TOTAL FUNDING	TRN	E	8,000 E
104.		WAINIHA BRIDGE REPLACEMENT PROJECT, KAUAI			
		CONSTRUCTION FOR THE BRIDGE REPLACEMENT PROJECT.			
		CONSTRUCTION		10,000	
		TOTAL FUNDING	TRN	10,000 E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F

TRN595 - HIGHWAYS ADMINISTRATION

105. X225 HIGHWAY DIVISION CAPITAL IMPROVEMENTS PROGRAM
PROJECT STAFF COSTS, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR COSTS RELATED TO WAGES & FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CIP PROJECTS FOR DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CIP PROJECT RELATED POSITIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		1	1
LAND		1	1
DESIGN		1	1
CONSTRUCTION		17,997	17,997
TOTAL FUNDING	TRN	12,000 B	12,000 B
	TRN	6,000 N	6,000 N

106. X227 ROCKFALL PROTECTIONS/SLOPE STABILIZATION AT VARIOUS LOCATIONS, STATEWIDE

CONSTRUCTION FOR ROCKFALL/SLOPE PROTECTION AND SLOPE STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION			21,000
TOTAL FUNDING	TRN	E	4,200 E
	TRN	N	16,800 N

107. X224 HIGHWAY SHORELINE PROTECTION, STATEWIDE

DESIGN AND CONSTRUCTION FOR SHORELINE PROTECTION IMPROVEMENTS OF EXISTING STATE HIGHWAY FACILITIES, INCLUDING SHORELINE PROTECTION STRUCTURES, RELOCATION AND REALIGNMENT OF THE HIGHWAY AND BEACH FILL/NOURISHMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		3,065	350
CONSTRUCTION		5,650	5,300
TOTAL FUNDING	TRN	4,195 E	1,410 E
	TRN	4,520 N	4,240 N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
108.	X097	MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF DRAINAGE FACILITIES, CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS, AND CULVERTS AT VARIOUS LOCATIONS.			
		DESIGN			200
		CONSTRUCTION		1,360	2,845
		TOTAL FUNDING TRN		1,360 E	3,045 E
109.	X241	MAJOR PAVEMENT IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR MAJOR PAVEMENT RECONSTRUCTION, RESURFACING, RESTORATION AND/OR REHABILITATION ALONG STATE ROUTES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		500	
		CONSTRUCTION		12,500	13,000
		TOTAL FUNDING TRN		12,000 E	12,000 E
			TRN	1,000 N	1,000 N
110.	X235	MOTOR CARRIER SAFETY AND HIGHWAY SAFETY OFFICE FACILITY, STATEWIDE			
		CONSTRUCTION TO RENOVATE AND REFURBISH EXISTING BUILDING STRUCTURES AND INSTALL MISCELLANEOUS SITE IMPROVEMENTS UNDER THE WAIMALU VIADUCT.			
		CONSTRUCTION		1,100	
		TOTAL FUNDING TRN		1,100 E	E
111.	X099	HIGHWAY PLANNING, STATEWIDE			
		PLANS FOR FEDERAL AID AND NON-FEDERAL AID PROGRAMS AND PROJECTS THAT INCLUDE ROADWAY CLASSIFICATION, DATA COLLECTION, LONG- AND MID-RANGE PLANNING, TRANSPORTATION NEEDS STUDIES, RESEARCH, HRS 343/NEPA STUDIES, CORRIDOR STUDIES, AND SCOPING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		4,525	7,875
		TOTAL FUNDING TRN		905 E	1,575 E
			TRN	3,620 N	6,300 N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M	FISCAL M
				YEAR O 2011-2012 F	YEAR O 2012-2013 F
112.	X098	IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		100	250
		CONSTRUCTION		1,350	4,700
		TOTAL FUNDING	TRN	450 E	1,190 E
			TRN	1,000 N	3,760 N
113.	X242	STATEWIDE INTELLIGENT TRANSPORTATION SYSTEM (ITS) ARCHITECTURE PLAN, STATEWIDE			
		PLANS FOR DEVELOPING A STATEWIDE INTELLIGENT TRANSPORTATION SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1,000	
		TOTAL FUNDING	TRN	200 E	E
			TRN	800 N	N
114.	X200	TRAFFIC COUNTING STATIONS AT VARIOUS LOCATIONS, STATEWIDE			
		CONSTRUCTION FOR INSTALLING TRAFFIC DETECTOR LOOPS, ASSOCIATED WIRING, JUNCTION BOXES, CABINETS AND TELEMTRY STATIONS AT VARIOUS LOCATIONS ON STATE ROADWAYS, INCLUDING AUTOMATIC TRAFFIC RECORDERS AND OTHER DATA PROCESSING IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			75
		TOTAL FUNDING	TRN	E	15 E
			TRN	N	60 N
115.		STUDY ON ALTERNATIVE ACCESS ROAD INTO AND OUT OF LEEWARD COAST, OAHU			
		PLANS FOR AN ALTERNATIVE ACCESS ROAD MAUKA OF FARRINGTON HIGHWAY BEGINNING AT LUALUALEI NAVAL MAGAZINE ROAD TO PROVIDE ACCESS INTO AND OUT OF THE LEEWARD COAST, OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1,000	
		TOTAL FUNDING	TRN	200 E	E
			TRN	800 N	N

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
116.01.	X231	HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY RENOVATION, STATEWIDE			
		PLANS AND CONSTRUCTION FOR THE RENOVATION AND IMPROVEMENTS TO THE HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY.			
		PLANS			150
		CONSTRUCTION			200
		TOTAL FUNDING	TRN	E	350 E
116.02.	X243	ALIIAIMOKU BUILDING IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS FOR THE DEPARTMENT OF TRANSPORTATION'S MAIN OFFICE BUILDING.			
		DESIGN			200
		CONSTRUCTION			1,600
		TOTAL FUNDING	TRN	E	1,800 E

D. ENVIRONMENTAL PROTECTION

HTH840 - ENVIRONMENTAL MANAGEMENT

1.

840121 WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE

CONSTRUCTION FUNDS TO PROVIDE STATE MATCH (20%) FOR FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS TO BE TRANSFERRED TO THE WATER POLLUTION CONTROL REVOLVING FUND PURSUANT TO CHAPTER 342D, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION	18,938	18,938
TOTAL FUNDING HTH	3,157 C	3,157 C
HTH	15,781 N	15,781 N
2.

840122 SAFE DRINKING WATER REVOLVING FUND, STATEWIDE

CONSTRUCTION FUNDS TO PROVIDE STATE MATCH (20%) FOR FEDERAL CAPITALIZATION GRANTS FOR DRINKING WATER PROJECTS. FUNDS TO BE TRANSFERRED TO THE DRINKING WATER TREATMENT REVOLVING FUND LOAN, PURSUANT TO CHAPTER 340E, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION	16,288	16,288
TOTAL FUNDING HTH	2,715 C	2,715 C
HTH	13,573 N	13,573 N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F

LNR401 - AQUATIC RESOURCES

3.		HANALEI RIVER, KAUAI			
		PLANS, DESIGN AND CONSTRUCTION TO UPGRADE, REPAIR AND REINFORCE THE HANALEI RIVER BREACH. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		998	1,098
		TOTAL FUNDING LNR		1,000C	1,100C
3.01.		WAIKIKI SEAWALL IMPROVEMENTS, OAHU			
		PLANS AND DESIGN FOR WAIKIKI SEAWALL REPAIRS TO THE PORTION THAT RUNS PARALLEL TO THE SHORE EXTENDING FROM 2937 KALAKAUA AVENUE TO COCONUT AVENUE IN WAIKIKI.			
		PLANS			200
		DESIGN			200
		TOTAL FUNDING LNR		C	400C

LNR402 - NATIVE RESOURCES AND FIRE PROTECTION PROGRAM

4.		LUMP SUM IMPROVEMENTS AT DOFAW FACILITIES FOR NATIVE RESOURCES AND/OR FIRE PROTECTION, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT DOFAW FACILITIES FOR NATIVE RESOURCES AND/OR FIRE PROTECTION, STATEWIDE.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		1,178	2,498
		TOTAL FUNDING LNR		1,180C	2,500C

LNR405 - CONSERVATION AND RESOURCES ENFORCEMENT

5.		LUMP SUM IMPROVEMENTS AT DOCARE OFFICE AND/OR BASEYARD FACILITIES, STATEWIDE			
		CONSTRUCTION FOR VARIOUS IMPROVEMENTS AT DOCARE OFFICE AND/OR BASEYARD FACILITIES, STATEWIDE.			
		CONSTRUCTION		280	120
		TOTAL FUNDING LNR		280C	120C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
LNR407 - NATURAL AREA RESERVES AND WATERSHED MANAGEMENT					
5.01.		KAWAINUI MARSH, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR THE RESTORATION OF ENDANGERED HABITAT AND WETLANDS IN KAWAINUI MARSH.			
		CONSTRUCTION			1,054
		EQUIPMENT			1
		TOTAL FUNDING	LNR	C	1,055 C
5.02.		NATURAL AREA RESERVES AND WATERSHED MANAGEMENT, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT TO PROTECT AND RESTORE FORESTED WATERSHEDS AND WATER SUPPLIES, STATEWIDE; EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		PLANS			1
		LAND			2,497
		DESIGN			1
		EQUIPMENT			1
		TOTAL FUNDING	LNR	C	2,500 C
LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT					
6.	G01CS00A	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE			
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.			
		PLANS		2,540	2,597
		TOTAL FUNDING	LNR	2,540 C	2,597 C
7.	G01C	TSUNAMI DAMAGE RESPONSE AT DLNR FACILITIES, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO ADDRESS, REPAIR AND/OR RECONSTRUCT DLNR FACILITIES DAMAGED IN THE MARCH 2011 TSUNAMI RESULTING FROM THE PACIFIC EARTHQUAKE.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		7,798	
		TOTAL FUNDING	LNR	7,800 C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

7.01. ADA PUBLIC ACCESSIBILITY AT DLNR FACILITIES, STATEWIDE
 DESIGN AND CONSTRUCTION TO PROVIDE PUBLIC ACCESSIBILITY AT DLNR FACILITIES.
 DESIGN 400
 CONSTRUCTION 600
 TOTAL FUNDING LNR C 1,000 C

E. HEALTH

HTH100 - COMMUNICABLE DISEASE SERVICES

0.01. 100131 KALAUPAPA SETTLEMENT IMPROVEMENTS, MOLOKAI
 DESIGN AND CONSTRUCTION TO CLOSE MUNICIPAL SOLID WASTE LANDFILL, REROOF BUILDINGS AND OTHER IMPROVEMENTS.
 DESIGN 1
 CONSTRUCTION 929
 TOTAL FUNDING AGS C 930 C

HTH595 - HEALTH RESOURCES ADMINISTRATION

1. HALE HOOLUOLU HOSPICE FACILITY, MAUI
 PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT OF A 12-BED HOSPICE CENTER ON THE ISLAND OF MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.
 PLANS 1
 LAND 1
 DESIGN 1
 CONSTRUCTION 496
 EQUIPMENT 1
 TOTAL FUNDING HTH 500 C C

2. MOLOKAI OHANA HEALTH CENTER, MOLOKAI
 DESIGN AND CONSTRUCTION FOR RENOVATION AND RELOCATION OF THE MOLOKAI COMMUNITY HEALTH CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.
 DESIGN 1
 CONSTRUCTION 499
 TOTAL FUNDING HTH 500 C 500 C

3. REHABILITATION HOSPITAL OF THE PACIFIC FOUNDATION, OAHU
 PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE REHAB HOSPITAL OF THE PACIFIC FOR HEALTH AND SAFETY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		2,498	
		TOTAL FUNDING	HTH	2,500C	C
4.		WAHIAWA GENERAL HOSPITAL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR MODERNIZATION AND EXPANSION OF EMERGENCY DEPARTMENT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		2,498	1,000
		TOTAL FUNDING	HTH	2,500C	1,000C
4.01.		WAHIAWA GENERAL HOSPITAL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR PARKING LOT RESURFACING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			248
		TOTAL FUNDING	HTH	C	250C
4.02.		WAI'ANAE COAST COMPREHENSIVE HEALTH CENTER (WCCHC), OAHU			
		CONSTRUCTION TO UPGRADE AND EXPAND EMERGENCY SERVICES BUILDING FOR THE WAI'ANAE COAST COMPREHENSIVE HEALTH CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION			2,000
		TOTAL FUNDING	HTH	C	2,000C
4.03.		HAWAII ISLAND COMMUNITY DEVELOPMENT CORPORATION, HAWAII			
		PLANS, LAND ACQUISITION AND DESIGN FOR AN ADULT CARE CENTER FACILITY IN HILO, HAWAII. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		LAND			383
		DESIGN			1
		TOTAL FUNDING	HTH	C	385C
4.04.		LANAI COMMUNITY HEALTH CENTER, LANAI			
		PLANS, DESIGN AND CONSTRUCTION FOR A NEW COMMUNITY HEALTH CENTER; TO MATCH FEDERAL FUNDS IN PLANNING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		CONSTRUCTION			498
		TOTAL FUNDING	HTH	C	500 C
HTH210 - HAWAII HEALTH SYSTEMS CORPORATION - CORPORATE OFFICE					
5.		LANAI COMMUNITY HOSPITAL, LANAI			
		PLANS AND DESIGN FOR EMERGENCY ROOM EXPANSION; FIRE SUPPRESSION & EXHAUST VENTILATION SYSTEM; REPAIRS, INSTALLATION OF HURRICANE WINDOW UPGRADE; MASTER PLANNING.			
		PLANS		1	
		DESIGN		1,339	
		TOTAL FUNDING	HTH	1,340 C	C
HTH212 - HAWAII HEALTH SYSTEMS CORPORATION - REGIONS					
6.		HAWAII HEALTH SYSTEMS CORPORATION, HEALTH AND SAFETY PROJECTS, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR PROJECTS THAT ARE OF HEALTH AND SAFETY TO THE FACILITIES IN THE HAWAII HEALTH SYSTEMS CORPORATION.			
		DESIGN		1	1
		CONSTRUCTION		14,998	14,998
		EQUIPMENT		1	1
		TOTAL FUNDING	HTH	15,000 C	15,000 C
7.		KONA COMMUNITY HOSPITAL UPGRADE, HAWAII			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT TO REPAIR AND UPGRADE THE EMERGENCY/ DISASTER INFRASTRUCTURE.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		4,997	
		EQUIPMENT		1	
		TOTAL FUNDING	HTH	5,000 C	C
8.		KAHUKU MEDICAL CENTER, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION TO UPGRADE AND RENOVATE HOSPITAL FACILITIES. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, INFRASTRUCTURE, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		4,998	
		TOTAL FUNDING	HTH	5,000 C	C

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
8.01.		HAWAII HEALTH SYSTEMS CORPORATION, REPAIR AND MAINTENANCE PROJECTS TO ALSO INCLUDE HEALTH AND SAFETY PROJECTS, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REPAIR AND MAINTENANCE PROJECTS, TO ALSO INCLUDE PROJECTS THAT ARE OF HEALTH AND SAFETY TO THE FACILITIES IN THE HAWAII HEALTH SYSTEMS CORPORATION.			
		PLANS			100
		DESIGN			100
		CONSTRUCTION			19,600
		EQUIPMENT			200
		TOTAL FUNDING	HTH	C	20,000C
HTH430 - ADULT MENTAL HEALTH - INPATIENT					
9.	430122	HAWAII STATE HOSPITAL, REPAIRS AND IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR VARIOUS REPAIRS AND IMPROVEMENTS.			
		DESIGN		1,430	300
		CONSTRUCTION		10,184	2,500
		TOTAL FUNDING	AGS	11,614C	2,800C
HTH907 - GENERAL ADMINISTRATION					
10.	907121	DEPARTMENT OF HEALTH, HEALTH AND SAFETY, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO HEALTH FACILITIES STATEWIDE. PROJECTS ARE NECESSARY TO MAINTAIN HEALTH AND SAFETY FOR CLIENTS AND STAFF.			
		DESIGN		495	350
		CONSTRUCTION		3,633	9,778
		TOTAL FUNDING	AGS	4,128C	10,128C
11.	907122	DEPARTMENT OF HEALTH, ENERGY EFFICIENCY IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO HEALTH FACILITIES STATEWIDE TO PROVIDE FOR ENERGY SAVINGS.			
		DESIGN		466	
		CONSTRUCTION		1,751	
		TOTAL FUNDING	AGS	2,217C	C
12.	907126	DEPARTMENT OF HEALTH, REPAIRS AND IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO HEALTH FACILITIES, STATEWIDE.			
		DESIGN		827	191
		CONSTRUCTION		6,338	1,112
		TOTAL FUNDING	AGS	7,165C	1,303C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
12.01.	907131	DEPARTMENT OF HEALTH, RENOVATE HALAWA VECTOR CONTROL AND WAIMANO RIDGE BUILDINGS, OAHU			
		DESIGN AND CONSTRUCTION TO RENOVATE VACANT HEALTH BUILDINGS FOR ENVIRONMENTAL HEALTH PROGRAMS BEING DISPLACED FROM ALA MOANA HEALTH CENTER AND AAFES BUILDING.			
		DESIGN			218
		CONSTRUCTION			2,000
		TOTAL FUNDING	AGS	C	2,218 C

F. SOCIAL SERVICES

DEF112 - SERVICES TO VETERANS

1. P90037 VETERANS CEMETERY IMPROVEMENTS, STATEWIDE
 PLANS, DESIGN AND CONSTRUCTION FOR MISCELLANEOUS UPGRADES AND IMPROVEMENTS TO VETERANS CEMETERIES STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		1	1
DESIGN		1	1
CONSTRUCTION		6,760	3,543
TOTAL FUNDING	DEF	6,761 C	3,544 C
	DEF	1 N	1 N
2. P70036 COLUMBARIA NICHES, STATEWIDE
 DESIGN AND CONSTRUCTION FOR ADDITIONAL COLUMBARIA NICHES STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		1	
CONSTRUCTION		1	
TOTAL FUNDING	DEF	2 N	N
3. OVS004 AIEA BAY PUMPHOUSE PROPERTY ENVIRONMENTAL REMEDIATION, OAHU
 DESIGN AND CONSTRUCTION FOR REMEDIATION ACTION FOR ENVIRONMENTAL CLEANUP. SITE ASSESSMENT WILL INCLUDE A PRIORITY FOCUS ON THE MERCURY CONTAMINATION ISSUES. MAY ALSO INCLUDE MISCELLANEOUS WORK RELATING TO SITE CLEANUP, SECURITY OF PROPERTY, AND VARIOUS CLOSE OUT ACTIONS REQUIRED BY OTHER STATE AND FEDERAL GOVERNMENT AGENCIES.

DESIGN		100	
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		CONSTRUCTION			500
		TOTAL FUNDING	DEF	100 C	500 C
4.		USS MISSOURI MEMORIAL ASSOCIATION, OAHU			
		PLANS, DESIGN AND CONSTRUCTION TO REPLACE AIR CONDITIONING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		158	
		TOTAL FUNDING	DEF	160 C	C
HMS220 - RENTAL HOUSING SERVICES					
5.	HPHA01	KUHIO PARK TERRACE IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR SITE IMPROVEMENTS.			
		DESIGN		200	
		CONSTRUCTION		2,550	
		TOTAL FUNDING	HMS	2,750 C	C
6.	HPHA02	MAYOR WRIGHT HOMES, RENOVATIONS AND IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR MAYOR WRIGHT HOMES, TO INCLUDE THE REMOVAL OF SOLAR WATER HEATERS, ROOF REPLACEMENT, INSTALLATION OF INSTANT HOT WATER SYSTEM, PAINTING, AND OTHER IMPROVEMENTS.			
		DESIGN		1	
		CONSTRUCTION		5,599	
		TOTAL FUNDING	HMS	5,600 C	C
7.	HPHA03	PALOLO VALLEY HOMES PHYSICAL IMPROVEMENTS PHASE 2, OAHU			
		DESIGN AND CONSTRUCTION FOR PALOLO VALLEY HOMES, PHYSICAL IMPROVEMENTS PHASE 2.			
		DESIGN		1	
		CONSTRUCTION		4,999	
		TOTAL FUNDING	HMS	5,000 C	C
9.	HPHA06	LANAKILA HOMES, RENOVATION OF EXISTING BUILDINGS, HAWAII			
		DESIGN AND CONSTRUCTION FOR LANAKILA HOMES, RENOVATION OF EXISTING BUILDINGS.			
		DESIGN		750	
		CONSTRUCTION			7,500
		TOTAL FUNDING	HMS	750 C	7,500 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
10.	HPHA07	HALE LAULIMA, MAJOR MODERNIZATION, ROOF REPLACEMENT, TERMITE DAMAGE, OAHU			
		DESIGN AND CONSTRUCTION FOR HALE LAULIMA, TO INCLUDE MAJOR MODERNIZATION, ROOF REPLACEMENT, AND EXTENSIVE TERMITE DAMAGE REPAIR.			
		DESIGN			1
		CONSTRUCTION			4,999
		TOTAL FUNDING	HMS	C	5,000C
11.	HPHA08	ADA COMPLIANCE FOR VARIOUS STATE AND FEDERAL PROJECTS, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR RENOVATIONS FOR ADA COMPLIANCE FOR VARIOUS STATE AND FEDERAL PROJECTS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION		10,000	9,998
		TOTAL FUNDING	HMS	10,000C	10,000C
12.	HPHA09	PUAHALA HOMES, PHASE 1B ABATEMENT AND MODERNIZATION BUILDINGS 4, 5, 6, OAHU			
		DESIGN AND CONSTRUCTION FOR PUAHALA HOMES, TO INCLUDE PHASE 1B ABATEMENT AND MODERNIZATION OF BUILDINGS 4, 5, AND 6.			
		DESIGN		105	
		CONSTRUCTION			1,900
		TOTAL FUNDING	HMS	105C	1,900C
13.	HPHA10	KALIHI VALLEY HOMES, SITE AND DWELLING IMPROVEMENTS PHASE IV, OAHU			
		DESIGN AND CONSTRUCTION FOR KALIHI VALLEY HOMES, TO INCLUDE SITE AND DWELLING IMPROVEMENTS PHASE IV.			
		DESIGN		700	
		CONSTRUCTION			7,000
		TOTAL FUNDING	HMS	700C	7,000C
14.	HPHA11	HAUIKI HOMES, SITE WORK AND ROOF REPAIRS, OAHU			
		DESIGN AND CONSTRUCTION FOR HAUIKI HOMES, SITE WORK AND ROOF REPAIRS.			
		DESIGN		65	
		CONSTRUCTION			600
		TOTAL FUNDING	HMS	65C	600C
15.	HPHA12	KAAHUMANU HOMES, SPALL REPAIR AND PAINTING FOR 19 BUILDINGS, SITE IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR KAAHUMANU HOMES, TO INCLUDE SPALL REPAIR AND PAINTING FOR 19 BUILDINGS, SITE IMPROVEMENTS, AND INTERIOR RENOVATIONS.			
		DESIGN		550	
		CONSTRUCTION		1,800	1,800
		TOTAL FUNDING	HMS	2,350C	1,800C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
16.	HPHA13	POMAIKAI, MAJOR RENOVATIONS AND SITE IMPROVEMENTS, HAWAII			
		DESIGN AND CONSTRUCTION FOR POMAIKAI, TO INCLUDE MAJOR RENOVATIONS, ROOF REPLACEMENT, INTERIOR REPAIRS, EXTERIOR AND SITE IMPROVEMENTS.			
		DESIGN		1	
		CONSTRUCTION		1,999	
		TOTAL FUNDING	HMS	2,000 C	C
17.	HPHA14	DAVID MALO CIRCLE, EXTERIOR IMPROVEMENTS AND SITE WORK, MAUI			
		DESIGN AND CONSTRUCTION FOR DAVID MALO CIRCLE, TO INCLUDE EXTERIOR IMPROVEMENTS, PAINTING, ROOF REPAIRS, AND SITE WORK.			
		DESIGN		1	
		CONSTRUCTION		1,799	
		TOTAL FUNDING	HMS	1,800 C	C
17.01.	HPHA21	LUMP SUM NON-ROUTINE REPAIR AND MAINTENANCE, IMPROVEMENTS, AND RENOVATIONS, EXTERIOR AND INTERIOR REPAIRS, SITE IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR NON-ROUTINE REPAIR & MAINTENANCE, IMPROVEMENTS, AND RENOVATIONS, TO ALSO INCLUDE PROJECTS THAT ARE FOR HEALTH AND SAFETY TO THE FACILITIES OF THE HAWAII PUBLIC HOUSING AUTHORITY, STATEWIDE.			
		PLANS			1
		DESIGN			149
		CONSTRUCTION			25,671
		EQUIPMENT			1
		TOTAL FUNDING	HMS	C	25,822 C
17.02.	HPHA21	U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT CHOICE NEIGHBORHOODS INITIATIVE, SITE IMPROVEMENTS, OAHU			
		PLANS, DESIGN AND CONSTRUCTION TO SUPPORT HUD CHOICE NEIGHBORHOODS INITIATIVE ACTIVITIES FOR VARIOUS PUBLIC HOUSING PROJECTS.			
		PLANS			2
		DESIGN			2
		CONSTRUCTION			596
		TOTAL FUNDING	HMS	C	600 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

HHL602 - PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS

18. P11013 NAHASDA DEVELOPMENT PROJECTS, STATEWIDE

PLANS, DESIGN AND CONSTRUCTION FOR VARIOUS HAWAIIAN HOMESTEAD PROJECTS AND IMPROVEMENTS STATEWIDE, PURSUANT TO THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT, PUBLIC LAW 107-73, 107TH CONGRESS. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		1		1
DESIGN		1		1
CONSTRUCTION		19,998		19,998
TOTAL FUNDING	HHL	20,000N		20,000N

19.01. WAIHULI HAWAIIAN HOMESTEADERS ASSOCIATION INC., STATEWIDE

DESIGN AND CONSTRUCTION FOR PHASE I OF DEVELOPMENT OF HALE HALAWAI. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.

DESIGN				60
CONSTRUCTION				600
TOTAL FUNDING	HHL		C	660C

HTH904 - EXECUTIVE OFFICE ON AGING

20. PALOLO CHINESE HOME, OAHU

CONSTRUCTION FOR RENOVATION OF THE DINING HALL IN THE CARE HOME BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

CONSTRUCTION		500		750
TOTAL FUNDING	HTH	500C		750C

G. FORMAL EDUCATION

EDN100 - SCHOOL BASED BUDGETING

1. 20 LUMP SUM CIP — SCHOOL BUILDING IMPROVEMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC SCHOOL FACILITIES, STATEWIDE. MAY INCLUDE PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES, ROOFING AND ROOF MAINTENANCE AGREEMENTS, AIR CONDITIONING, PAINTING, PLUMBING, FURNITURE AND REPLACEMENT FURNITURE, AND OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		DESIGN		2,000	20,000
		CONSTRUCTION		8,288	96,500
		TOTAL FUNDING	EDN	10,288 B	116,500 B
2.	10	LUMP SUM CIP — PROJECT ADJUSTMENT FUND, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DEPARTMENT OF EDUCATION PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		600	600
		CONSTRUCTION		1,397	1,397
		EQUIPMENT		1	1
		TOTAL FUNDING	EDN	2,000 B	2,000 B
3.	001001	LUMP SUM CIP — RELOCATE/CONSTRUCT TEMPORARY FACILITIES, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES (INCLUDING RESTROOMS) AND RELATED SITE IMPROVEMENTS, EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES WHILE NEW SCHOOLS ARE BEING PLANNED AND/OR CONSTRUCTED; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		2,000	964
		CONSTRUCTION		5,676	3,880
		EQUIPMENT		324	156
		TOTAL FUNDING	EDN	8,000 B	5,000 B
4.	006	LUMP SUM CIP — ADA COMPLIANCE, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY TO SCHOOL FACILITIES FOR HANDICAPPED PERSONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		900	500
		CONSTRUCTION		4,100	3,000
		TOTAL FUNDING	EDN	5,000 B	3,500 B

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
5.	009	LUMP SUM CIP — HEALTH AND SAFETY, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH AND SAFETY REQUIREMENTS INCLUDING FIRE PROTECTION PROVISIONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		400	400
		CONSTRUCTION		1,100	2,100
		TOTAL FUNDING	EDN	1,500 B	2,500 B
6.	008009	LUMP SUM CIP — HAZARDOUS MATERIALS REMOVAL, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR THE CORRECTION, AND RENOVATION OF ALL EXISTING SCHOOL BUILDINGS AND CAMPUSES RELATED TO THE IDENTIFICATION AND/OR REMOVAL OF HAZARDOUS MATERIALS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		100	50
		DESIGN		200	150
		CONSTRUCTION		700	800
		TOTAL FUNDING	EDN	1,000 B	1,000 B
7.	012	LUMP SUM CIP — ELECTRICAL/INFRASTRUCTURE IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR ELECTRICAL, TELECOMMUNICATIONS, PROGRAM BELL AND OTHER INFRASTRUCTURE IMPROVEMENTS AT VARIOUS SCHOOLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	1
		DESIGN		1	498
		CONSTRUCTION		10,797	9,500
		EQUIPMENT		1	1
		TOTAL FUNDING	EDN	10,800 B	10,000 B
8.	031	LUMP SUM CIP — HIGH SCHOOL SCIENCE FACILITIES UPGRADES, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE IMPROVEMENT OF EXISTING OR NEW HIGH SCHOOL SCIENCE FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		2,000	200
		CONSTRUCTION		12,500	4,800
		EQUIPMENT		500	
		TOTAL FUNDING	EDN	15,000 B	5,000 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
9.	000007	LUMP SUM CIP — SPECIAL EDUCATION RENOVATIONS, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO RENOVATE CLASSROOMS TO ADDRESS SPECIAL EDUCATION NEEDS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	200
		CONSTRUCTION		799	1,799
		EQUIPMENT		1	1
		TOTAL FUNDING EDN		1,000 B	2,000 B
10.	19	LUMP SUM CIP — GENDER EQUITY, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR GENDER EQUITY PROJECTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		450	450
		CONSTRUCTION		1,500	1,500
		EQUIPMENT		50	50
		TOTAL FUNDING EDN		2,000 B	2,000 B
11.	004004	LUMP SUM CIP — NOISE/HEAT ABATEMENT, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE AND VENTILATION PROBLEMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		500	400
		CONSTRUCTION		2,500	1,600
		TOTAL FUNDING EDN		3,000 B	2,000 B
12.	002002	LUMP SUM CIP — MINOR RENOVATIONS AND IMPROVEMENTS, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES TO IMPROVE THE EDUCATIONAL PROGRAM AND TO CORRECT EDUCATIONAL SPECIFICATIONS DEFICIENCIES, INCLUDING STATE AND DISTRICT OFFICE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		300	400
		CONSTRUCTION		1,625	1,000
		EQUIPMENT		75	100
		TOTAL FUNDING EDN		2,000 B	1,500 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
13.	18	LUMP SUM CIP — MASTER PLAN/LAND ACQUISITION, STATEWIDE			
		PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES, ACQUISITION OF PARCELS, ACQUISITION SERVICES, FEASIBILITY STUDIES TO UPGRADE EXISTING FACILITIES, AND OTHER SERVICES NEEDED TO MEET FUTURE AND UNFORESEEN NEEDS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		500	500
		LAND		500	500
		TOTAL FUNDING EDN		1,000 B	1,000 B
14.	031	LUMP SUM CIP — ENERGY IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR ENERGY IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		200	200
		DESIGN		300	300
		CONSTRUCTION		1,499	1,499
		EQUIPMENT		1	1
		TOTAL FUNDING EDN		2,000 B	2,000 B
15.		LUMP SUM CIP — PLAYGROUND EQUIPMENT AND ACCESSIBILITY, STATEWIDE			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT, PROVIDE ACCESSIBILITY TO THE PLAY AREAS/EQUIPMENT PER AMERICAN WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	50
		CONSTRUCTION		449	449
		EQUIPMENT		1	1
		TOTAL FUNDING EDN		500 B	500 B
16.		AIEA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO INSTALL AIR CONDITIONING. GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		199	
		TOTAL FUNDING EDN		200 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
16.01.		AIEA INTERMEDIATE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A RETAINING WALL, PERIMETER FENCE AND GATE. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			949
		TOTAL FUNDING EDN		B	950B
16.02.		AIEA INTERMEDIATE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS WIDE ELECTRICAL UPGRADES GROUND AND SITE APPURTENANCES.			
		DESIGN			5
		CONSTRUCTION			1,195
		TOTAL FUNDING EDN		B	1,200B
17.		AIEA HIGH SCHOOL, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO COMPLETE THE EXPANSION AND RENOVATION FOR THE ADMINISTRATION BUILDING, AND GROUND AND SITE APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		228	
		EQUIPMENT		1	
		TOTAL FUNDING EDN		230B	B
18.		AINA HAINA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR VARIOUS PROJECTS AT THE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		252	
		EQUIPMENT		1	
		TOTAL FUNDING EDN		255B	B
19.		ALA WAI ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING EDN		1,000B	B
19.01.		ALA WAI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A CUSTODIAL STORAGE SHED BETWEEN BUILDINGS H & D; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			15
		CONSTRUCTION			135
		TOTAL FUNDING EDN		B	150B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
19.02.		CENTRAL MAUI MIDDLE SCHOOL, MAUI			
		PLANS AND LAND ACQUISITION FOR A NEW MIDDLE SCHOOL CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			2
		LAND			498
		TOTAL FUNDING	EDN	B	500 B
20.	120028	DOE DATA CENTER, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR BACKUP GENERATOR FOR EXISTING DATA CENTER OR NEW DATA CENTER AT A DIFFERENT SITE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		300	
		CONSTRUCTION		1,800	
		EQUIPMENT		100	
		TOTAL FUNDING	EDN	2,200 B	B
21.	120024	EAST KAPOLEI HIGH SCHOOL, OAHU			
		PLANS, LAND ACQUISITION AND DESIGN FOR A NEW HIGH SCHOOL CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		900	
		LAND		100	
		DESIGN			2,300
		TOTAL FUNDING	EDN	1,000 B	2,300 B
22.	120026	EAST KAPOLEI MIDDLE SCHOOL, OAHU			
		DESIGN FOR A NEW MIDDLE SCHOOL CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		2,500	
		TOTAL FUNDING	EDN	2,500 B	B
23.		ENCHANTED LAKE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS WIDE ELECTRICAL UPGRADE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		1,399	
		TOTAL FUNDING	EDN	1,400 B	B
23.01.		EWA BEACH ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			1,478
		TOTAL FUNDING	EDN	B	1,480 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
24.		EWA ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO CONSTRUCT AN EIGHT-CLASSROOM BUILDING, INCLUDING ALL OTHER ADJOINING FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		700	
		CONSTRUCTION			9,500
		EQUIPMENT			100
		TOTAL FUNDING EDN		700B	9,600B
25.	P10128	FARRINGTON HIGH SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REHABILITATION OF THE CAMPUS FACILITIES, INCLUDING SWIMMING POOL AND LOCKER ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			4,997
		EQUIPMENT			1
		TOTAL FUNDING EDN		B	5,000B
25.01.		HALE KULA ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO UPGRADE AND EXPAND THE CAMPUS FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			20
		CONSTRUCTION			27,960
		EQUIPMENT			20
		TOTAL FUNDING EDN		B	6,000B
				N	22,000N
26.01.		HEEIA ELEMENTARY, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A COVERED PLAYCOURT AND DRAINAGE IMPROVEMENTS; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		PLANS			25
		DESIGN			25
		CONSTRUCTION			2,450
		TOTAL FUNDING EDN		B	2,500B
27.		HELEMANO ELEMENTARY SCHOOL, OAHU			
		PLANS AND DESIGN FOR A NEW LIBRARY AT HELEMANO ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		PLANS		1	
		DESIGN		499	
		TOTAL FUNDING	EDN	500 B	B
28.		HIGHLANDS INTERMEDIATE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO RENOVATE THE CHORUS CLASSROOM, INCLUDING ASBESTOS REMOVAL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		80	
		CONSTRUCTION		400	
		TOTAL FUNDING	EDN	480 B	B
28.01.		HILO INTERMEDIATE SCHOOL, HAWAII			
		PLANS AND DESIGN FOR LOCKER ROOMS AND SHOWERS; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		PLANS			250
		DESIGN			250
		TOTAL FUNDING	EDN	B	500 B
28.02.		HOKULANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR COVERED LANAIS; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			15
		CONSTRUCTION			135
		TOTAL FUNDING	EDN	B	150 B
28.03.		HONOWAI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE REMOVAL AND REPLACEMENT OF THE STAIRWAYS FOR BUILDING H; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			189
		TOTAL FUNDING	EDN	B	190 B
29.		ILIAHI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF COVERING FOR PLAY COURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		1,499	
		TOTAL FUNDING	EDN	1,500 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
30.		JAMES CAMPBELL HIGH SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR IMPROVEMENTS AND UPGRADES FOR THE ATHLETIC TRACK AND FIELD COMPLEX; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		997	
		EQUIPMENT		1	
		TOTAL FUNDING EDN		1,000 B	B
31.		JAMES B. CASTLE HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION TO REPLACE THE LIGHTING SYSTEM AND SOUND SYSTEM IN THE RONALD BRIGHT AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		20	
		DESIGN		80	
		CONSTRUCTION		485	
		TOTAL FUNDING EDN		585 B	B
32.		KAILUA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL SYSTEM UPGRADE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		1,300	
		TOTAL FUNDING EDN		1,400 B	B
33.		KAILUA HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR REMOVAL AND REPLACEMENT OF SOCCER/FOOTBALL FIELD BLEACHERS/ STORAGE ROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		50	
		DESIGN		500	
		CONSTRUCTION		1,950	
		TOTAL FUNDING EDN		2,500 B	B
34.		KAISER HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR A GIRLS ATHLETIC LOCKER ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		699	
		CONSTRUCTION			6,500
		TOTAL FUNDING EDN		700 B	6,500 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
35.		KALAHEO HIGH SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR IMPROVEMENTS TO THE ATHLETIC FIELD. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,497	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	1,500 B	B
35.01.		KALAHEO HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION OF BLEACHERS FOR ATHLETIC FIELD AND TENNIS COURTS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			408
		TOTAL FUNDING	EDN	B	410 B
36.		KALANI HIGH SCHOOL, OAHU			
		DESIGN FOR GIRLS' LOCKER ROOM/ SHOWER BUILDING PER TITLE IX REQUIREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		800	
		TOTAL FUNDING	EDN	800 B	B
37.		KALEIOPUU ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			550
		TOTAL FUNDING	EDN	B	550 B
37.01.		KALEIOPUU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A SECOND RAMP FOR CAMPUS EVACUATION; GROUND AND SITE IMPROVEMENTS; AND EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			624
		TOTAL FUNDING	EDN	B	625 B
37.02.		KALIHI UKA ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION TO RE-ROOF AND REPAIR WATER DAMAGED INFRASTRUCTURE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			300
		TOTAL FUNDING	EDN	B	300 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
38.		KAMAILE ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			800
		TOTAL FUNDING EDN		B	800B
38.01.		KAMILOIKI ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR ADA TRANSITION ACCESSIBILITY; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		PLANS			37
		DESIGN			37
		CONSTRUCTION			301
		TOTAL FUNDING EDN		B	375B
39.		KANEOHE ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR ADA TRANSITION PLAN; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		30	
		DESIGN		150	
		CONSTRUCTION		600	
		TOTAL FUNDING EDN		780B	B
41.		KANOELANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL SYSTEM UPGRADE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		949	
		TOTAL FUNDING EDN		950B	B
41.01.		KANOELANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR COVERED WALKWAYS; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			75
		CONSTRUCTION			675
		TOTAL FUNDING EDN		B	750B
42.	454051	KAPAA ELEMENTARY SCHOOL, KAUAI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		75	
		CONSTRUCTION		5,850	
		EQUIPMENT		75	
		TOTAL FUNDING EDN		6,000B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
42.01.	P90080	KAPOLEI HIGH SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A NEW LOCKER ROOM AND SHOWERS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			25
		DESIGN			25
		CONSTRUCTION			4,615
		TOTAL FUNDING EDN		B	4,665 B
43.	P90080	KAPOLEI II ELEMENTARY SCHOOL, OAHU			
		LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW ELEMENTARY SCHOOL IN THE KAPOLEI REGION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		LAND			1
		DESIGN			1
		CONSTRUCTION			39,398
		EQUIPMENT			600
		TOTAL FUNDING EDN		B	40,000 B
43.01.		KAPUNAHALA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A MECHANICAL LIFT TO TRANSPORT WHEELCHAIR-BOUND STUDENTS FROM THE GROUND FLOOR TO THE SECOND FLOOR; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			33
		CONSTRUCTION			297
		TOTAL FUNDING EDN		B	330 B
44.		KAUAI HIGH SCHOOL, KAUAI			
		PLANS, DESIGN AND CONSTRUCTION FOR A NEW GYMNASIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		100	
		CONSTRUCTION		10,835	
		TOTAL FUNDING EDN		10,936 B	B
44.01.		KAUAI HIGH SCHOOL, KAUAI			
		CONSTRUCTION FOR THE RENOVATION OF EXISTING BUILDING T FOR NEW TECHNOLOGY CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			500
		TOTAL FUNDING EDN		B	500 B

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
44.02.		KAWANANAKOA MIDDLE SCHOOL, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE PERFORMING ARTS CENTER AND AUDITORIUM RENOVATION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			10
		CONSTRUCTION			4,980
		EQUIPMENT			10
		TOTAL FUNDING	EDN	B	5,000B
45.	370051	KEAAU MIDDLE SCHOOL, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	
		CONSTRUCTION		2,200	
		EQUIPMENT		100	
		TOTAL FUNDING	EDN	2,500B	B
46.		KEONEULA ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR 4 NEW PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		1,373	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	1,375B	B
46.01.		KING INTERMEDIATE, OAHU			
		DESIGN AND CONSTRUCTION TO CONVERT THE SCHOOL CAFETERIA INTO A CAFETORIUM BY ADDING BATHROOMS AND A STAGE, INCLUDING UPGRADES TO THE MEDIA SYSTEM; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			70
		CONSTRUCTION			630
		TOTAL FUNDING	EDN	B	700B
47.		KING KEKAULIKE HIGH SCHOOL, MAUI			
		DESIGN AND CONSTRUCTION FOR A NEW AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		1,949	9,900
		TOTAL FUNDING	EDN	1,950B	9,900B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
48.		KING LUNALILO ELEMENTARY, OAHU			
		PLANS, CONSTRUCTION AND EQUIPMENT FOR RESURFACING OF BASKETBALL COURTS AND PURCHASE OF HOOPS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		CONSTRUCTION		198	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	200 B	B
49.		KIPAPA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO REPLACE AIR CONDITIONING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			199
		TOTAL FUNDING	EDN	B	200 B
50.		KOHALA HIGH SCHOOL, HAWAII			
		PLANS AND DESIGN FOR A STEM/ SCIENCE BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	1
		DESIGN		799	799
		TOTAL FUNDING	EDN	800 B	800 B
51.	120020	KUALAPUU ELEMENTARY SCHOOL, MOLOKAI			
		DESIGN AND CONSTRUCTION FOR A NEW WATERLINE AND/OR OTHER PROVISIONS FOR FIRE SUPPRESSION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		2,749	
		TOTAL FUNDING	EDN	2,750 B	B
52.		LAHAINA INTERMEDIATE SCHOOL, MAUI			
		DESIGN AND CONSTRUCTION FOR RENOVATION OF STUDENT RESTROOMS; GROUND AND SITE IMPROVEMENTS.			
		DESIGN			85
		CONSTRUCTION			855
		TOTAL FUNDING	EDN	B	940 B
53.	F12018	LAIE ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION FOR THE EXPANSION OF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		62	
		TOTAL FUNDING	EDN	62 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
54.		LEHUA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO EXPAND THE SCHOOL PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		500	
		TOTAL FUNDING EDN		600 B	B
55.		LINCOLN ELEMENTARY SCHOOL, OAHU			
		DESIGN FOR AIR CONDITIONING UPGRADES FOR BUILDING C AND D IN ORDER OF PRIORITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	
		TOTAL FUNDING EDN		200 B	B
55.01.		MAKAKILO ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A PORTABLE BUILDING FOR SPECIAL EDUCATION; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			37
		CONSTRUCTION			338
		TOTAL FUNDING EDN		B	375 B
55.02.		MANANA ELEMENTARY SCHOOL LIBRARY, OAHU			
		DESIGN AND CONSTRUCTION TO COMPLETE RENOVATIONS TO THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			10
		CONSTRUCTION			350
		TOTAL FUNDING EDN		B	360 B
56.		MANOA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR THE RESURFACING OF THE BLACKTOP PLAY AREA FOR THE STUDENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		10	
		DESIGN		10	
		CONSTRUCTION		480	
		TOTAL FUNDING EDN		500 B	B
56.01.		MANOA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A ROOF OVER THE EXISTING OPEN-ROOFED ASPHALT PLAYCOURT; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			50

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		CONSTRUCTION			450
		TOTAL FUNDING	EDN	B	500B
56.02.		MAUI HIGH SCHOOL, MAUI			
		PLANS AND DESIGN FOR A MULTIPURPOSE ROOM; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		PLANS			125
		DESIGN			125
		TOTAL FUNDING	EDN	B	250B
57.		MCKINLEY HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR A NEW SYNTHETIC TRACK AND FIELD, DEMOLITION AND CONSTRUCTION OF EXISTING STRUCTURES AND OTHER NECESSARY IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		4,998	3,000
		TOTAL FUNDING	EDN	5,000B	3,000B
57.01.		MCKINLEY HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			7
		CONSTRUCTION			990
		TOTAL FUNDING	EDN	B	997B
58.		MILILANI HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO RECONSTRUCT AND RESURFACE TENNIS COURTS, PARKING LOT, AND DRIVEWAY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			899
		TOTAL FUNDING	EDN	B	900B
59.		MILILANI HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO REPLACE AND UPGRADE FIBER-OPTIC BACKBONE AND BUILDING NETWORK CABLING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		999	
		TOTAL FUNDING	EDN	1,000B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
59.01.		MILILANI HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO RESURFACE THE LOWER PARKING LOT AND DRIVEWAY; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			25
		CONSTRUCTION			326
		TOTAL FUNDING	EDN	B	351 B
59.02.		MILILANI HIGH SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR ADDITIONAL RESTROOMS AND UPGRADE OF CONCESSION STAND FOR ATHLETIC FIELD; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		PLANS			10
		DESIGN			10
		CONSTRUCTION			1,070
		EQUIPMENT			10
		TOTAL FUNDING	EDN	B	1,100 B
60.		MILILANI MAUKA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF COVERED WALKWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		500	
		TOTAL FUNDING	EDN	501 B	B
61.		MILILANI MIDDLE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF A COVERING FOR OUTDOOR PLAY COURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		500	
		TOTAL FUNDING	EDN	501 B	B
62.		MILILANI MIDDLE SCHOOL, OAHU			
		CONSTRUCTION TO REPAIR AND REPLACE ROOFS ON BUILDINGS G AND F; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		750	
		TOTAL FUNDING	EDN	750 B	B
63.		MILILANI IKE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR REPAIR AND RENOVATION OF COVERED PLAY COURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		DESIGN		1	
		CONSTRUCTION		149	
		TOTAL FUNDING	EDN	150 B	B
64.		MILILANI UKA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR INSTALLATION OF NEW PLAYGROUND EQUIPMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		72	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	75 B	B
64.01.		MOANALUA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR PARKING SAFETY IMPROVEMENTS, INCLUDING ADDITIONAL PARKING & A NEW DROP OFF LANE; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			33
		CONSTRUCTION			297
		TOTAL FUNDING	EDN	B	330 B
65.		MOANALUA HIGH SCHOOL, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR SCHOOL AUDITORIUM/PERFORMING ARTS CENTER TO COMPLETE PHASE 1; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES AND ALL RELATED PROJECT COSTS.			
		CONSTRUCTION		599	
		EQUIPMENT		1	
		TOTAL FUNDING	EDN	600 B	B
66.		MOMILANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		599	
		TOTAL FUNDING	EDN	600 B	B
66.01.		NANAKULI HIGH SCHOOL AND INTERMEDIATE SCHOOL, OAHU			
		PLANS AND DESIGN FOR A NEW TRACK AND FIELD; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		PLANS			25
		DESIGN			2,475
		TOTAL FUNDING	EDN	B	2,500 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
66.02.		NIU VALLEY MIDDLE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR FOUR WORLD LANGUAGE CLASSROOMS; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			30
		CONSTRUCTION			2,970
		TOTAL FUNDING EDN		B	3,000B
67.		NOELANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO EXPAND THE CURRENT SCHOOL LIBRARY SPACE FOR AN EXPANDED LIBRARY COLLECTION, WORK SPACE, AND INCLUSION OF A TECHNOLOGY/MEDIA CENTER WITHIN THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION		900	
		TOTAL FUNDING EDN		1,000B	B
67.01.		NUUANU ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RESURFACING OF AN OUTDOOR COVERED GYM FLOOR; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		PLANS			1
		DESIGN			2
		CONSTRUCTION			20
		EQUIPMENT			2
		TOTAL FUNDING EDN		B	25B
67.02.		NUUANU ELEMENTARY SCHOOL, OAHU			
		PLANS, CONSTRUCTION AND EQUIPMENT TO RECOAT WALKWAY ROOF LOCATED IN THE FRONT OF THE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		CONSTRUCTION			8
		EQUIPMENT			1
		TOTAL FUNDING EDN		B	10B
68.		OLOMANA SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION OF A TWELVE-FOOT EXTENSION TO THE EXISTING PHYSICAL EDUCATION PORTABLE TO ACCOMMODATE INCREASING NUMBERS OF "AT-RISK" STUDENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		5	
		DESIGN		8	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		CONSTRUCTION		75	
		TOTAL FUNDING	EDN	88 B	B
69.		PAHOA ELEMENTARY SCHOOL, HAWAII			
		PLANS AND DESIGN FOR A NEW CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		999	
		TOTAL FUNDING	EDN	1,000 B	B
70.		PEARL CITY HIGHLANDS, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		949	
		TOTAL FUNDING	EDN	950 B	B
70.01.		PEARL CITY HIGH SCHOOL, OAHU			
		PLANS AND DESIGN TO INSTALL A SYNTHETIC TRACK AND FIELD AT THE BINO NEVES STADIUM; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		PLANS			75
		DESIGN			475
		TOTAL FUNDING	EDN	B	550 B
71.		PEARLRIDGE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		1,149	
		TOTAL FUNDING	EDN	1,150 B	B
71.01.		PEARLRIDGE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR COVERED WALKWAYS; GROUND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			649
		TOTAL FUNDING	EDN	B	650 B
71.02.		PRESIDENT THEODORE ROOSEVELT HIGH SCHOOL, OAHU			
		PLANS AND DESIGN FOR A MASTER PLAN; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		PLANS			125
		DESIGN			125
		TOTAL FUNDING	EDN	B	250 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
73.		PUOHALA ELEMENTARY SCHOOL, OAHU			
		PLANS AND DESIGN FOR A STRUCTURAL ASSESSMENT TO ADDRESS THE SEPARATION OF WALLS IN BUILDINGS ON CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		249	
		TOTAL FUNDING EDN		250 B	B
73.01.	P90110	RADFORD HIGH SCHOOL, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO UPGRADE ALL-WEATHER TRACK FROM SIX TO EIGHT LANES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			10
		CONSTRUCTION			580
		EQUIPMENT			10
		TOTAL FUNDING EDN		B	600 B
74.		ROYAL ELEMENTARY SCHOOL, OAHU			
		PLANS AND DESIGN FOR BUILDING C; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		199	
		TOTAL FUNDING EDN		200 B	B
74.01.		ROYAL KUNIA ELEMENTARY SCHOOL, OAHU			
		PLANS FOR A NEW ELEMENTARY SCHOOL CAMPUS IN ROYAL KUNIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			150
		TOTAL FUNDING EDN		B	150 B
75.		SALT LAKE ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO RENOVATE INTERIOR CLASSROOMS OF C-1 AND E-3, A/C INSTALL AND ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	200
		CONSTRUCTION		500	500
		EQUIPMENT		300	300
		TOTAL FUNDING EDN		1,000 B	1,000 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
76.		SEAGULL SCHOOLS PRESCHOOL, OAHU			
		CONSTRUCTION OF A NEW CLASSROOM BUILDING LOCATED AT KAPOLEI ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		300	
		TOTAL FUNDING EDN		300C	C
77.		STEVENSON MIDDLE SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION OF BUILDING A, MULTI-PURPOSE SCIENCE LEARNING CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		225	
		DESIGN		225	
		CONSTRUCTION			6,750
		TOTAL FUNDING EDN		450B	6,750B
78.		WAIAKEA HIGH SCHOOL, HAWAII			
		CONSTRUCTION AND EQUIPMENT FOR THE SCHOOL'S NEW ALL-WEATHER TRACK AND FIELD FACILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		3,000	
		EQUIPMENT			500
		TOTAL FUNDING EDN		3,000B	500B
79.		WAIAKEAWAENA ELEMENTARY SCHOOL, HAWAII			
		CONSTRUCTION FOR ADDITIONAL PARKING ON KINOOLE STREET; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			450
		TOTAL FUNDING EDN		B	450B
79.01.		WAIAKEAWAENA ELEMENTARY SCHOOL, HAWAII			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO INSTALL A FALL SAFETY SURFACE WITH GROUND COVERING AND PADDING AT THE PLAYGROUND; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		PLANS			10
		DESIGN			35
		CONSTRUCTION			300
		EQUIPMENT			5
		TOTAL FUNDING EDN		B	350B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
79.02.		WAIALUA ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE NEW LIBRARY/MEDIA CENTER; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			7
		CONSTRUCTION			58
		EQUIPMENT			5
		TOTAL FUNDING EDN		B	70B
80.		WAI'AU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR CAMPUS-WIDE ELECTRICAL UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			1,199
		TOTAL FUNDING EDN		B	1,200B
80.01.		WAIKELE ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RESURFACING OF THE BASKETBALL COURT, CREATION OF ADJACENT PLAYGROUND CONCRETE SURFACE, REMOVAL OF EXISTING EQUIPMENT & REPLACEMENT WITH AGE APPROPRIATE PRE-KINDERGARTEN PLAYGROUND EQUIPMENT; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			17
		CONSTRUCTION			150
		EQUIPMENT			8
		TOTAL FUNDING EDN		B	175B
80.02.		WAIKELE ELEMENTARY SCHOOL, OAHU			
		PLANS AND DESIGN FOR EXPANSION OF EXISTING CAFETERIA TO INCLUDE A PERFORMING ARTS STAGE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			793
		TOTAL FUNDING EDN		B	794B
80.03.		WAIKIKI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO CREATE A STUDENT DROP OFF LANE; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			45
		CONSTRUCTION			405
		TOTAL FUNDING EDN		B	450B

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
81.		WAIMANALO ELEMENTARY AND INTERMEDIATE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO INSTALL CAMPUS-WIDE IRRIGATION SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		499	
		TOTAL FUNDING EDN		500B	B
81.01.		WAIMANALO ELEMENTARY AND INTERMEDIATE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO INSTALL A COVERED WALKWAY & WATER FOUNTAINS; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			105
		CONSTRUCTION			945
		TOTAL FUNDING EDN		B	1,050B
81.02.		WAIMANALO ELEMENTARY AND INTERMEDIATE SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR SCHOOL-WIDE ELECTRICAL UPGRADE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			348
		TOTAL FUNDING EDN		B	350B
82.	P90122	WAIPAHU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		8,099	
		TOTAL FUNDING EDN		8,100B	B
83.		WAIPAHU HIGH SCHOOL, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADES IN BUILDINGS H, G, AND Q; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		58	
		TOTAL FUNDING EDN		60B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
83.01.		WAIPAHA HIGH SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR A RETAINING WALL BEHIND BUILDING C TO BUILDING Q; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		DESIGN			20
		CONSTRUCTION			180
		TOTAL FUNDING	EDN	B	200B
83.02.		WAIPAHA HIGH SCHOOL, OAHU PLANS AND DESIGN FOR SYNTHETIC FIELD TURF AND TRACK IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			10
		DESIGN			990
		TOTAL FUNDING	EDN	B	1,000B
84.		WAIPAHA INTERMEDIATE SCHOOL, OAHU DESIGN FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		800	
		TOTAL FUNDING	EDN	800B	B
85.		WASHINGTON MIDDLE SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADES FOR THE SCHOOL KITCHEN, CAFETERIA, AND BUILDING B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		179	
		TOTAL FUNDING	EDN	180B	B
85.01.		WASHINGTON MIDDLE SCHOOL, OAHU DESIGN, CONSTRUCTION AND EQUIPMENT TO RENOVATE A CLASSROOM IN BUILDING H; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			25
		CONSTRUCTION			425
		EQUIPMENT			25
		TOTAL FUNDING	EDN	B	475B
85.02.		WASHINGTON MIDDLE SCHOOL, OAHU DESIGN, CONSTRUCTION AND EQUIPMENT TO RENOVATE COMPUTER CLASSROOM IN BUILDING C; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			193
		EQUIPMENT			1
		TOTAL FUNDING	EDN	B	195B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

EDN400 - SCHOOL SUPPORT

86. 000014 LUMP SUM CIP — PROJECT POSITIONS, STATEWIDE

PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT, PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.

PLANS	5,200	5,200
TOTAL FUNDING EDN	5,200 B	5,200 B

EDN600 - CHARTER SCHOOLS

87. THE EXPLORATION FOUNDATION, HAWAII

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR RELOCATION OF THE EXPLORATION ACADEMY PCS CAMPUS FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS	1	
LAND	1	
DESIGN	1	
CONSTRUCTION	1,496	
EQUIPMENT	1	
TOTAL FUNDING EDN	1,500 C	C

88. FRIENDS OF THE VOLCANO SCHOOL OF ARTS AND SCIENCES, HAWAII

PLANS AND DESIGN TO RELOCATE VOLCANO SCHOOL OF ARTS AND SCIENCES TO KEAKEALANI SCHOOL IN VOLCANO VILLAGE ON THE ISLAND OF HAWAII; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS	309	
DESIGN	309	
TOTAL FUNDING EDN	618 C	C

- 88.01. AHA PUNANA LEO, INC, KAUAI

PLANS, DESIGN AND CONSTRUCTION FOR A PHOTOVOLTAIC SYSTEM FOR KE KULA NIIHAU O KEKAHA CHARTER SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2011-2012	FISCAL YEAR 2012-2013
		PLANS			1
		DESIGN			1
		CONSTRUCTION			198
		TOTAL FUNDING	EDN	C	200 C

EDN407 - PUBLIC LIBRARIES

89. 01-H S HEALTH AND SAFETY, STATEWIDE

PLANS, DESIGN AND CONSTRUCTION FOR HEALTH, SAFETY, ACCESSIBILITY, AND OTHER CODE REQUIREMENTS. PROJECTS MAY INCLUDE, BUT NOT BE LIMITED TO, THE REMOVAL OF HAZARDOUS MATERIALS, RENOVATIONS FOR LIBRARY PATRONS AND EMPLOYEES, ENVIRONMENTAL CONTROLS, FIRE PROTECTION, IMPROVEMENTS TO BUILDINGS AND GROUNDS, AND OTHERS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

PLANS	200	200
DESIGN	600	600
CONSTRUCTION	1,200	2,200
TOTAL FUNDING	2,000 C	3,000 C

89.01. P90124 AIEA PUBLIC LIBRARY, OAHU

CONSTRUCTION AND EQUIPMENT OF PV SYSTEM AND RELATED IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

CONSTRUCTION		1,525
EQUIPMENT		225
TOTAL FUNDING	AGS	1,750 C

90. KANEOHE PUBLIC LIBRARY, OAHU

PLANS, DESIGN AND CONSTRUCTION OF NEW, ADA COMPLIANT CIRCULATION DESK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

PLANS		5
DESIGN		5
CONSTRUCTION		10
TOTAL FUNDING	AGS	20 C

91. NEW NANAKULI PUBLIC LIBRARY, OAHU

DESIGN FOR A NEW NANAKULI PUBLIC LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

DESIGN		1,075
TOTAL FUNDING	AGS	1,075 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
91.01.		WAIKOLOA PUBLIC LIBRARY, HAWAII PLANS AND DESIGN FOR A WAIKOLOA PUBLIC LIBRARY; GROUND & SITE IMPROVEMENTS; EQUIPMENT & APPURTENANCES.			
		PLANS			400
		DESIGN			400
		TOTAL FUNDING	AGS	C	800C
UOH100 - UNIVERSITY OF HAWAII, MANOA					
92.		MOKU O LO'E (COCONUT ISLAND), OAHU			
		PLANS, CONSTRUCTION AND EQUIPMENT TO DEMOLISH THE OLD AND DILAPIDATED STRUCTURE THAT WAS ONCE PART OF THE PAULEY GUEST HOUSE AND RESIDENCE ON THE ISLAND. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, INFRASTRUCTURE, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		PLANS		1	
		CONSTRUCTION		698	
		EQUIPMENT		1	
		TOTAL FUNDING	UOH	700C	C
92.01.	R15	UHM, COCONUT ISLAND IMPROVEMENTS, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR IMPROVEMENTS TO COCONUT ISLAND FOR THE INSTITUTE OF MARINE BIOLOGY. PROJECT MAY INCLUDE THE REPAIR, RENOVATION AND MODERNIZATION OF EXISTING FACILITIES; INFRASTRUCTURE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES; DEVELOPMENT OF RENEWABLE ENERGY; IMPROVEMENTS TO MAILE POINT AND LILIPUNA PIER; AND ALL PROJECT RELATED COSTS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			3,497
		EQUIPMENT			1
		TOTAL FUNDING	UOH	C	3,500C
92.02.		UHM, LUMP SUM IMPROVEMENTS TO ATHLETIC FACILITIES, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO ATHLETIC FACILITIES AT THE UNIVERSITY OF HAWAII AT MANOA CAMPUS, GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			125
		DESIGN			125
		CONSTRUCTION			12,250
		TOTAL FUNDING	UOH	C	12,500C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
92.03.		UHM, PACIFIC HEALTH RESEARCH LABORATORY, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A PACIFIC HEALTH RESEARCH LABORATORY ON OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING OR REIMBURSEMENT.			
		PLANS			150
		DESIGN			150
		CONSTRUCTION			12,199
		EQUIPMENT			1
		TOTAL FUNDING	UOH	C	12,500 C
92.04.		UHM, RICHARDSON LAW SCHOOL, EXPANSION AND MODERNIZATION, OAHU			
		DESIGN FOR THE EXPANSION AND MODERNIZATION OF THE WEST WING OF THE WILLIAM S. RICHARDSON SCHOOL OF LAW. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW FACILITY, AND ALL PROJECT EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		DESIGN			825
		TOTAL FUNDING	UOH	C	825 C
UOH210 - UNIVERSITY OF HAWAII, HILO					
93.		UHH, STUDENT HOUSING DEVELOPMENTS, PHASE 1, HAWAII			
		PLANS, DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF STUDENT HOUSING FACILITIES FOR THE UNIVERSITY OF HAWAII AT HILO; GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		31,998	
		TOTAL FUNDING	UOH	16,000 C	
			UOH	16,000 E	C
94.		LIVING LEARNING COMMUNITY, UNIVERSITY OF HAWAII AT HILO, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF EXISTING FACILITIES AND DEVELOPMENT OF AN ADDITION TO UNIVERSITY OF HAWAII AT HILO STUDENT HOUSING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		DESIGN		700	
		CONSTRUCTION		7,100	
		EQUIPMENT		200	
		TOTAL FUNDING	UOH	4,000 C	C
			UOH	4,000 N	N
94.01.		UHH, COLLEGE OF AGRICULTURE, FOREST & NATURAL RESOURCE MANAGEMENT (CAFNRM), HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE UNIVERSITY OF HAWAII AT HILO'S COLLEGE OF AGRICULTURE, FOREST & NATURAL RESOURCE MANAGEMENT (CAFNRM) BEE HIVE RESEARCH FACILITY IN PANAEWA, HAWAII.			
		PLANS			2
		DESIGN			2
		CONSTRUCTION			21
		TOTAL FUNDING	UOH	C	25 C
UOH700 - UNIVERSITY OF HAWAII, WEST OAHU					
95.		UNIVERSITY OF HAWAII - WEST OAHU, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A PHOTOVOLTAIC PANEL ARRAY TO GENERATE POWER FOR THE NEW UH WEST OAHU CAMPUS IN KAPOLEI.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		2,497	
		EQUIPMENT		1	
		TOTAL FUNDING	UOH	2,500 C	C
95.01.		UNIVERSITY OF HAWAII - WEST OAHU, OAHU			
		DESIGN AND CONSTRUCTION OF ROAD A ON THE CAMPUS OF UHWO TO CONNECT TO FARRINGTON HIGHWAY; PROJECT TO INCLUDE NECESSARY INTERSECTION IMPROVEMENTS.			
		DESIGN			1
		CONSTRUCTION			1,249
		TOTAL FUNDING	UOH	C	1,250 C
95.02.		UNIVERSITY OF HAWAII - WEST OAHU, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR CAMPUS-WIDE SITEWORK AND IMPROVEMENTS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			2,497
		EQUIPMENT			1
		TOTAL FUNDING	UOH	C	2,500 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR	FISCAL YEAR
				2011-2012	2012-2013
				M O F	M O F
95.03.		UNIVERSITY OF HAWAII - WEST OAHU, OAHU			
		PLANS AND DESIGN FOR AN ACADEMY OF CREATIVE MEDIA FACILITY TO BE LOCATED ON THE CAMPUS OF UHWO. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		PLANS			1
		DESIGN			899
		TOTAL FUNDING	UOH	C	450 C
			UOH	E	450 E
95.04.		UNIVERSITY OF HAWAII - WEST OAHU, OAHU			
		PLANS AND DESIGN FOR THE ALLIED HEALTH BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		PLANS			1
		DESIGN			994
		TOTAL FUNDING	UOH	C	500 C
			UOH	E	495 E
UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES					
96.	L28	LEE, EDUCATION AND INNOVATION FACILITY, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW EDUCATION AND INNOVATION INSTRUCTIONAL FACILITY AT LEEWARD COMMUNITY COLLEGE.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		19,010	
		EQUIPMENT		1	
		TOTAL FUNDING	UOH	19,013 C	C
97.		MAUI, RENOVATION OF THE ORIGINAL SCIENCE BUILDING, MAUI			
		CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF THE EXISTING SCIENCE BUILDING TO HOUSE ALLIED HEALTH PROGRAMS AT UNIVERSITY OF HAWAII MAUI COLLEGE. PROJECT INCLUDES RENOVATION OF EXISTING FACILITY, EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		CONSTRUCTION			4,000
		EQUIPMENT			501
		TOTAL FUNDING	UOH	C	4,501 C
98.		HAW, HAWAII COMMUNITY COLLEGE, HAWAII			
		PLANS TO UPDATE THE LONG RANGE DEVELOPMENT PLAN FOR THE HAWAII COMMUNITY COLLEGE CAMPUS.			
		PLANS			500
		TOTAL FUNDING	UOH	C	500 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M	FISCAL M
				YEAR O 2011-2012 F	YEAR O 2012-2013 F
99.		LEE, WAIANAE EDUCATION CENTER, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE WAIANAE EDUCATION CENTER.			
		PLANS		1	
		LAND		500	
		DESIGN		500	
		CONSTRUCTION		1,998	
		EQUIPMENT		1	
		TOTAL FUNDING	UOH	3,000C	C
100.		SYS, MINOR CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR CAMPUSES OF THE COMMUNITY COLLEGE SYSTEM, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR MINOR CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR CAMPUS FACILITIES WITHIN THE UNIVERSITY OF HAWAII, COMMUNITY COLLEGE SYSTEM.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		9,997	4,997
		EQUIPMENT		1	1
		TOTAL FUNDING	UOH	10,000C	5,000C
100.01.	B42	KAP, CULINARY INSTITUTE OF THE PACIFIC - DIAMOND HEAD, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE DEVELOPMENT OF THE CULINARY INSTITUTE OF THE PACIFIC. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW FACILITY, AND ALL PROJECT EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		DESIGN			9,998
		CONSTRUCTION			1
		EQUIPMENT			1
		TOTAL FUNDING	UOH	C	10,000C
100.02.		SYS, CAPITAL RENEWAL AND DEFERRED MAINTENANCE FOR CAMPUSES OF THE COMMUNITY COLLEGE SYSTEM, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO UNIVERSITY OF HAWAII, COMMUNITY COLLEGE FACILITIES, STATEWIDE. PROJECTS TO INCLUDE CAPITAL RENEWAL, REDUCTION OF MAINTENANCE BACKLOG, MAJOR AND MINOR RENOVATIONS, MODERNIZATION OF FACILITIES, REROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RESURFACING, REPAINTING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL COMMUNITY COLLEGE CAMPUSES.			
		PLANS			1
		DESIGN			1

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		CONSTRUCTION			9,997
		EQUIPMENT			1
		TOTAL FUNDING	UOH	C	10,000 C
100.03.		WEST HAWAII COMMUNITY COLLEGE AT PALAMANUI, HAWAII			
		CONSTRUCTION AND EQUIPMENT FOR PHASE 1 AND 2 AT HAWAII COMMUNITY COLLEGE AT PALAMANUI. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS AND ALL PROJECT EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.			
		CONSTRUCTION			7,499
		EQUIPMENT			1
		TOTAL FUNDING	UOH	C	7,500 C
UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT					
101.	536	SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND CODE REQUIREMENTS.			
		PLANS		301	1
		DESIGN		1,255	1
		CONSTRUCTION		28,444	19,410
		EQUIPMENT			1
		TOTAL FUNDING	UOH	30,000 C	19,413 C
102.	541	SYS, CAPITAL RENEWAL AND DEFERRED MAINTENANCE, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO UNIVERSITY OF HAWAII FACILITIES. PROJECTS TO INCLUDE CAPITAL RENEWAL, REDUCTION OF MAINTENANCE BACKLOG, MAJOR AND MINOR RENOVATIONS, MODERNIZATION OF FACILITIES, REROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RESURFACING, REPAINTING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES.			
		PLANS		1	1
		DESIGN		3,000	1
		CONSTRUCTION		46,998	49,997
		EQUIPMENT		1	1
		TOTAL FUNDING	UOH	50,000 C	50,000 C
103.	548	SYS, UNIVERSITY OF HAWAII PROJECT ADJUSTMENT FUND, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A PROJECT ADJUSTMENT FUND FOR THE UNIVERSITY OF HAWAII.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1	
		EQUIPMENT		1	
		TOTAL FUNDING	UOH	4C	C

H. CULTURE AND RECREATION

LNR804 - FOREST AND OUTDOOR RECREATION

1.	D00K	LUMP SUM IMPROVEMENTS AT DOFAW FACILITIES FOR FORESTS AND/OR OUTDOOR RECREATION, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION AT DOFAW FACILITIES FOR FORESTS AND/OR OUTDOOR RECREATION.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		3,323	
		TOTAL FUNDING	LNR	3,325C	C
1.01.		MAUNAWILI TRAIL, OAHU			
		PLANS FOR A PUBLIC PARKING LOT FOR MAUNAWILI TRAIL.			
		PLANS			25
		TOTAL FUNDING	LNR	C	25C
1.02.		MOANALUA GARDENS FOUNDATION, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR KAMANANUI VALLEY ROAD IMPROVEMENTS; TO INCLUDE LEVELING, GRADING AND OTHER SITE IMPROVEMENTS. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			607
		EQUIPMENT			1
		TOTAL FUNDING	LNR	C	610C

LNR806 - PARKS ADMINISTRATION AND OPERATION

2.		STATE PARKS ENERGY AND WATER EFFICIENCY IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION OF ENERGY AND WATER EFFICIENCY AND RELATED IMPROVEMENTS.			
		DESIGN		500	
		CONSTRUCTION		500	1,000
		TOTAL FUNDING	LNR	1,000C	1,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
3.		LUMP SUM CIP, STATE PARKS IMPROVEMENTS, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION OF REPAIR AND MAINTENANCE IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS AT STATE PARKS FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		DESIGN		2,029	899
		CONSTRUCTION		16,245	17,820
		TOTAL FUNDING	LNR	18,075 C	18,520 C
			LNR	200 N	200 N
4.		CENTRAL MAUI REGIONAL PARK, MAUI			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR ESTABLISHMENT OF A REGIONAL PARK IN THE AREA OF CENTRAL MAUI; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	1
		LAND		1	1
		DESIGN		1	1
		CONSTRUCTION		8,997	2,497
		TOTAL FUNDING	LNR	9,000 C	2,500 C
5.		LUALUALEI FLATS/PUHAWAI STREAM, OAHU			
		CONSTRUCTION FOR FLOOD MITIGATION.			
		CONSTRUCTION		2,000	
		TOTAL FUNDING	LNR	2,000 C	C
6.		MANA DRAG RACING STRIP, KAUAI			
		PLANS, DESIGN AND CONSTRUCTION TO UPGRADE AND RESURFACE MANA DRAG RACING STRIP. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		498	998
		TOTAL FUNDING	LNR	500 C	1,000 C
7.		FRIENDS OF IOLANI PALACE, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR CONTINUING RENOVATIONS, REPAIRS AND RESTORATION WITHIN THE PALACE COMPLEX. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		498	248
		TOTAL FUNDING	LNR	500 C	250 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
7.01.		POLIHALE STATE PARK, KAUAI			
		PLANS AND DESIGN FOR A STUDY FOR SITE MAINTENANCE FOR THE EXISTING 5 MILE LONG ACCESS ROAD TO POLIHALE STATE PARK. IF DEEMED NECESSARY, PROJECT TO ALSO INCLUDE POSSIBLE REALIGNMENT OF THE EXISTING ACCESS ROAD OVER THE LANDS ENCUMBERED BY THE AGRIBUSINESS DEVELOPMENT CORPORATION.			
		PLANS			100
		DESIGN			100
		TOTAL FUNDING	LNR	C	200C
7.02.		PUHAWAI CULVERT, OAHU			
		DESIGN AND CONSTRUCTION FOR THE PUHAWAI CULVERT REPLACEMENT.			
		DESIGN			5
		CONSTRUCTION			1,995
		TOTAL FUNDING	LNR	C	2,000C
LNR801 - OCEAN-BASED RECREATION					
8.		MALA BOAT RAMP AND LOADING DOCK, LAHAINA, MAUI			
		CONSTRUCTION FOR NEW LOADING DOCKS, IMPROVEMENTS TO BOAT RAMP, PARKING LOT AND RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		800	
		TOTAL FUNDING	LNR	200C	C
			LNR	600N	N
9.		KIKIAOLA SMALL BOAT HARBOR SAND BY-PASS PROGRAM, KEKAHA, KAUAI			
		PLANS, DESIGN AND CONSTRUCTION FOR A SAND BY-PASS PROJECT TO MOVE SAND FROM THE EAST SIDE OF THE HARBOR TO THE WEST SIDE OF THE HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		200	
		DESIGN		200	
		CONSTRUCTION			1,000
		TOTAL FUNDING	LNR	400N	1,000N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
10.	B99	LUMP SUM IMPROVEMENTS AT BOATING AND OCEAN RECREATION FACILITIES, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT VARIOUS BOATING FACILITIES TO INCLUDE PIER, LOADING DOCKS, UTILITIES, BOAT RAMPS, RESTROOMS, PARKING AREAS, STRUCTURES, DREDGING, SEWER SYSTEMS, BUILDING, FENCING, RENDERING, MOORINGS, LANDSCAPING AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		7,498	3,998
		TOTAL FUNDING	LNR	7,000C	4,000C
			LNR	500N	N
11.		MAUNALUA BAY LAUNCH RAMP FACILITY, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT TO RENOVATE THE MAUNALUA BAY LAUNCH RAMP FACILITY.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,997	
		EQUIPMENT		1	
		TOTAL FUNDING	LNR	2,000E	E
12.		HALEIWA SMALL BOAT HARBOR, OAHU			
		PLANS, DESIGN AND CONSTRUCTION OF NEW PIER, CATWALKS, APPROACHES, AND FLOATING DOCK SYSTEM AT THE HALEIWA SMALL BOAT HARBOR.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		1,998	
		TOTAL FUNDING	LNR	2,000C	C
13.		HANA BOAT RAMP AND WHARF IMPROVEMENTS, MAUI			
		PLANS, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE BOAT RAMP, REVETMENT, APPROACH AREA, AND OTHER RELATED WORK.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		3,123	
		TOTAL FUNDING	LNR	3,125C	C
14.		WAIANAE BOAT HARBOR IMPROVEMENTS, OAHU			
		PLANS AND DESIGN FOR IMPROVEMENTS AT WAIANAE BOAT HARBOR. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
		DESIGN		499	
		TOTAL FUNDING	LNR	500C	C
15.		WAILOA SMALL BOAT HARBOR DREDGING, HAWAII			
		CONSTRUCTION FOR REMOVAL OF SAND AT THE ENTRANCE TO THE WAILOA SMALL BOAT HARBOR.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	LNR	1,000C	C
15.01.		HONOKOHAU SMALL BOAT HARBOR IMPROVEMENTS, PHASE II, HAWAII			
		DESIGN AND CONSTRUCTION OF A PARKING LOT, ROAD, WATER SYSTEM, ELECTRICAL AND MISCELLANEOUS WORK. ADDITIONAL DESIGN AND CONSTRUCTION MONEY IS NEEDED TO IMPLEMENT THIS PROJECT.			
		DESIGN			150
		CONSTRUCTION			500
		TOTAL FUNDING	LNR	C	650C
15.02.		HANAIEI BOAT RAMP, KAUAI			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO PURCHASE ALLOTMENTS I & II OF THE WILCOX PROPERTY TO ALLOW FOR IMPROVEMENTS AND RELOCATION OF THE HANAIEI BOAT RAMP.			
		PLANS			1
		LAND			507
		DESIGN			2
		CONSTRUCTION			1,490
		TOTAL FUNDING	LNR	C	2,000C
AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM					
16.	Q104	LUMP SUM HEALTH AND SAFETY, ALOHA STADIUM, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR THE MITIGATION/ELIMINATION OF CONDITIONS THAT MAY BECOME HAZARDOUS TO HEALTH AND SAFETY, INCLUDING REPAIRS, ALTERATIONS, AND IMPROVEMENTS TO THE ALOHA STADIUM TO MEET CODE, SAFETY, AND/OR OPERATIONAL REQUIREMENTS.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		5,148	5,148
		TOTAL FUNDING	AGS	5,150C	5,150C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

I. PUBLIC SAFETY

PSD900 - GENERAL ADMINISTRATION

1. P-20110 LUMP SUM CIP, RENOVATION, REPLACEMENT AND IMPROVEMENT PROJECTS, STATEWIDE

PLANS, DESIGN AND CONSTRUCTION FOR VARIOUS RENOVATIONS, REPLACEMENTS AND OTHER IMPROVEMENTS TO ANY PSD PROGRAM, STATEWIDE. SAID ACTIONS MAY INCLUDE, BUT NOT BE LIMITED TO, BUILDINGS AND BUILDINGS OPERATING SYSTEMS; SITE UTILITIES AND/OR OTHER IMPROVEMENTS.

PLANS	1	1
DESIGN	1	1
CONSTRUCTION	7,998	7,998
TOTAL FUNDING PSD	8,000 C	8,000 C

2. P20112 PLANNING FOR THE ORDERLY DEVELOPMENT OF NEW CORRECTIONAL FACILITIES, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR THE ORDERLY DEVELOPMENT OF NEW AND/OR REPLACEMENT CORRECTIONAL FACILITIES BY THE DEPARTMENT OF PUBLIC SAFETY, STATEWIDE.

PLANS	1	
LAND	1	
DESIGN	1	
CONSTRUCTION	997	
TOTAL FUNDING PSD	1,000 C	C

DEF110 - AMELIORATION OF PHYSICAL DISASTERS

3. A0201 RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT TO RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES AND INCREASE THE NUMBER OF PUBLIC SHELTERS STATEWIDE.

PLANS	2	1
LAND	2	1
DESIGN	46	98
CONSTRUCTION	1,200	1,050
EQUIPMENT	750	500
TOTAL FUNDING DEF	2,000 C	1,650 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
4.	A40	DISASTER WARNING AND COMMUNICATIONS DEVICES, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT AND UPGRADE OF STATE CIVIL DEFENSE WARNING AND COMMUNICATIONS EQUIPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		158	158
		CONSTRUCTION		1,200	1,200
		EQUIPMENT		240	240
		TOTAL FUNDING	DEF	1,500 C	1,500 C
			DEF	100 N	100 N
5.	A45	AMERICANS WITH DISABILITIES ACT (ADA) AND INFRASTRUCTURE IMPROVEMENTS, STATEWIDE			
		CONSTRUCTION FOR MODIFICATIONS FOR PERSONS WITH DISABILITIES AND TO IDENTIFY AND CORRECT EXISTING DEFICIENCIES FOR THE DEPARTMENT OF DEFENSE (DOD) FACILITIES. THIS PROJECT IS NECESSARY TO MEET REQUIREMENTS IN ACCORDANCE WITH STATE AND FEDERAL LAWS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		1,753	
		TOTAL FUNDING	AGS	707 C	C
			AGS	1,046 N	N
6.	A46	HEALTH AND SAFETY REQUIREMENTS FOR BIRKHIMER TUNNEL AND SUPPORT FACILITIES, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR HEALTH AND SAFETY IMPROVEMENTS TO THE STATE EMERGENCY OPERATING CENTER, BIRKHIMER TUNNEL & SUPPORT FACILITIES TO INCLUDE ADA COMPLIANCE, SPRINKLER SYSTEM, AND ADDITIONAL INSTALLATION OF CONDUITS, REMOVAL OF OVERHEAD UTILITY LINES, & OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		23	23
		CONSTRUCTION		395	400
		EQUIPMENT		123	175
		TOTAL FUNDING	DEF	543 C	600 C

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
7.	AD2071	ENERGY SAVINGS IMPROVEMENTS AND RENEWABLE ENERGY PROJECTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF ENERGY EFFICIENT STATE OF THE ART BLDG AC SYSTEMS TO REPLACE FAILING AND INEFFICIENT EQUIPMENT. IMPLEMENT EXT CONTROLS TO PROVIDE SET BACKS AND REDUCE ENERGY CONSUMPTION STATEWIDE. DESIGN AND CONSTRUCT RENEWABLE ENERGY TECHNOLOGIES TO REDUCE USE OF FOSSIL FUELS AND PROVIDE CLEAN AND RELIABLE ENERGY FOR HIGH CONSUMPTION ON FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		100	200
		CONSTRUCTION		3,395	6,300
		TOTAL FUNDING	DEF	250 C	1,250 C
			DEF	3,245 N	5,250 N
8.	A44	RENOVATION OF BLDG 117, KALAELOA, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR AN ARMY NATIONAL GUARD CONSOLIDATED FACILITY OF PERMANENT STEEL AND MASONRY TYPE CONSTRUCTION, UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, INTERIM RENOVATIONS AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,581	
		CONSTRUCTION		39,500	
		EQUIPMENT		50	745
		TOTAL FUNDING	DEF	1,650 C	50 C
			DEF	39,481 N	695 N
9.	AB2073	29TH INFANTRY BRIGADE COMBAT TEAM READINESS CENTER, KALAELOA, OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR THE NEW 29TH BRIGADE COMBAT TEAM READINESS CENTER WILL BE BUILT TO NATIONAL GUARD BUREAU STANDARDS AND WILL MEET LEED SILVER USAGE LEVEL REQUIREMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	
		DESIGN		449	450
		CONSTRUCTION			33,000
		TOTAL FUNDING	DEF	450 C	450 C
			DEF	N	33,000 N

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
10.	A42	MINOR MILITARY CONSTRUCTION AND RENOVATIONS AT ARMY GUARD FACILITIES, OAHU		
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR REPLACEMENT OF EXISTING HAWAII ARMY NATIONAL GUARD KALAELOA AND RTI CAMPUS UTILITIES INFRASTRUCTURE, LARGER REPAIR PROJECTS, AND FEDERAL ENERGY PROJECTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.		
		PLANS	300	
		DESIGN	1,500	
		CONSTRUCTION	1,000	500
		EQUIPMENT		16,500
		TOTAL FUNDING DEF	1,800 C	500 C
		DEF	1,000 N	16,500 N
11.		UPGRADE AND IMPROVEMENTS TO NATIONAL GUARD FACILITIES, STATEWIDE		
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND UPGRADES TO NATIONAL GUARD ARMORIES TO CONFORM TO CURRENT NATIONAL GUARD BUREAU STANDARDS AND CRITERIA, AND TO MEET UNANTICIPATED HEALTH, SAFETY, AND BUILDING CODE REQUIREMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.		
		DESIGN		700
		CONSTRUCTION	4,600	10,740
		TOTAL FUNDING DEF	1,400 C	4,050 C
		DEF	3,200 N	7,390 N
11.01.		LUMP SUM CIP - DEPARTMENT OF DEFENSE FACILITIES, INFRASTRUCTURE, AND DEVICES, STATEWIDE		
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR UPGRADES, IMPROVEMENTS AND RENOVATIONS, TO INCLUDE REPAIR AND MAINTENANCE AND HEALTH AND SAFETY PROJECTS FOR DEPARTMENT OF DEFENSE FACILITIES, STATEWIDE.		
		PLANS		15
		DESIGN		15
		CONSTRUCTION		2,969
		EQUIPMENT		1
		TOTAL FUNDING DEF	C	3,000 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

K. GOVERNMENT-WIDE SUPPORT

GOV100 - OFFICE OF THE GOVERNOR

1. G01 PROJECT ADJUSTMENT FUND, STATEWIDE

PLANS FOR THE ESTABLISHMENT OF
A CONTINGENCY FUND FOR PROJECT
ADJUSTMENT PURPOSES SUBJECT TO THE
PROVISIONS OF THE APPROPRIATIONS ACT.

PLANS	1	1
TOTAL FUNDING GOV	1C	1C

BUF101 - DEPARTMENTAL ADMINISTRATION AND BUDGET DIVISION

2. 00-01 HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE

CONSTRUCTION TO AUTHORIZE THE
TRANSFER OF GENERAL OBLIGATION
BOND FUNDS TO THE HAWAIIAN HOME
LANDS TRUST FUND TO SATISFY THE
PROVISIONS OF ACT 14, SPSLH 1995.

CONSTRUCTION	30,000	30,000
TOTAL FUNDING BUF	30,000C	30,000C

3. 00-02 STATE EDUCATIONAL FACILITIES IMPROVEMENT FUND, STATEWIDE

CONSTRUCTION TO AUTHORIZE THE
TRANSFER OF GENERAL OBLIGATION
BOND FUNDS TO THE STATE
EDUCATIONAL FACILITIES IMPROVEMENT
SPECIAL FUND.

CONSTRUCTION	538,246	296,472
TOTAL FUNDING BUF	538,246C	296,472C

3.01. CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, DLWOP, STATEWIDE

PLANS TO ADD FUNDS DUE TO THE
IMPLEMENTATION OF A DIRECTED LEAVE
WITHOUT PAY (DLWOP) PROGRAM AND
THE EXEMPTION OF CERTAIN NON-
GENERAL FUNDS FROM THE DLWOP
PROGRAM FOR BARGAINING UNIT 1.

PLANS	22	24
TOTAL FUNDING BUF	22B	24B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION

4.	1	KEELIKOLANI BLDG, AIR CONDITIONING UPGRADE FOR THE TAX DEPARTMENT'S COMPUTER ROOM, OAHU			
		DESIGN AND CONSTRUCTION TO UPGRADE THE 24/7 AC THAT COOLS MULTIPLE DOTAX COMPUTER EQUIPMENT INCLUDING THE MULTI-MILLION DOLLAR ITIMS IMAGING SYSTEMS (IIS).			
		DESIGN		33	
		CONSTRUCTION		300	
		TOTAL FUNDING	TAX	333 C	

AGS131 - INFORMATION PROCESSING AND COMMUNICATIONS SERVICES

5.	Q102	LUMP SUM HEALTH AND SAFETY, INFORMATION AND COMMUNICATION SERVICE DIVISION, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR REPAIRS, UPGRADES AND EXPANSION OF CRITICAL COMMUNICATIONS BACKBONE SYSTEMS, INCLUDING THE STATEWIDE ANUENUE AND HAWAIIAN MICROWAVE SYSTEMS AND THE WINDWARD, NORTH SHORE AND CENTRAL OAHU RADIO SITES. EFFORTS INCLUDE WORK THAT ALSO SUPPORTS FUTURE BROADBAND AIR INTERFACE DEVELOPMENT AND IMPLEMENTATION.			
		PLANS		150	150
		LAND		50	50
		DESIGN		300	300
		CONSTRUCTION		7,035	6,935
		EQUIPMENT		600	600
		TOTAL FUNDING	AGS	8,135 C	8,035 C
6.	S101	ICSD KALANIMOKU BUILDING DATA CENTER OPTIMIZATION AND ENERGY EFFICIENCY, OAHU			
		PLANS AND DESIGN FOR REPAIRS, UPGRADES AND EXPANSION OF CRITICAL DATA CENTER SYSTEMS AND SUPPORT INFRASTRUCTURE WITHIN THE KALANIMOKU BUILDING, OAHU. WORK WILL OPTIMIZE NECESSARY STATEWIDE FUNCTIONALITY AND INCREASE ENERGY EFFICIENCY WITHIN THE FACILITY.			
		PLANS		50	
		DESIGN		50	100
		TOTAL FUNDING	AGS	100 C	100 C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M	FISCAL M
				YEAR O	YEAR O
				2011-2012 F	2012-2013 F
6.01.	U101	STATEWIDE FINANCIAL SYSTEM ENTERPRISE REENGINEERING (ERP), STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR DEVELOPMENT AND IMPLEMENTATION OF AN INTEGRATED FINANCIAL MANAGEMENT SYSTEM FOR THE STATE OF HAWAII.			
		PLANS			14,997
		DESIGN			1
		CONSTRUCTION			1
		EQUIPMENT			1
		TOTAL FUNDING	AGS	C	15,000 C

LNR101 - PUBLIC LANDS MANAGEMENT

7.	J42A	DAM ASSESSMENTS, MAINTENANCE AND REMEDIATION, STATEWIDE			
		PLANS, DESIGN AND CONSTRUCTION FOR ASSESSMENTS, MAINTENANCE AND REMEDIATION OF DAMS UNDER THE JURISDICTION OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		2,498	9,498
		TOTAL FUNDING	LNR	C	7,000 C
			LNR	2,500 S	2,500 S

AGS221 - PUBLIC WORKS - PLANNING, DESIGN, AND CONSTRUCTION

8.	E109	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR COSTS RELATING TO WAGES AND FRINGES FOR PERMANENT, PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.			
		PLANS		7,361	7,361
		LAND		1	1
		DESIGN		1	1
		CONSTRUCTION		1	1
		EQUIPMENT		1	1
		TOTAL FUNDING	AGS	7,365 C	7,365 C

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)	
ITEM NO.	CAPITAL PROJECT NO.	EXPENDING TITLE	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
9.	Q101	LUMP SUM MAINTENANCE OF EXISTING FACILITIES, PUBLIC WORKS DIVISION, STATEWIDE		
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS AND MAINTENANCE OF PUBLIC FACILITIES AND SITES, STATEWIDE. PROJECTS MAY INCLUDE ROOFING, OTHER REPAIRS, AND IMPROVEMENTS.		
		PLANS	50	50
		LAND	1	1
		DESIGN	200	200
		CONSTRUCTION	16,240	13,740
		EQUIPMENT	9	9
		TOTAL FUNDING AGS	16,500 C	14,000 C
10.	P60131	ENERGY CONSERVATION AND SUSTAINABLE DESIGN IMPROVEMENTS, STATEWIDE		
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR DEVELOPMENT AND IMPLEMENTATION OF A COMPREHENSIVE ENERGY CONSERVATION PLAN TO MAXIMIZE ENERGY EFFICIENCY IN PUBLIC FACILITIES AND OPERATIONS. EFFORTS WILL INCLUDE CONSIDERATION FOR SUSTAINABLE DESIGN TO THE FULLEST EXTENT POSSIBLE.		
		PLANS	1	1
		DESIGN	1	1
		CONSTRUCTION	3,436	1,997
		EQUIPMENT	1	1
		TOTAL FUNDING AGS	3,439 C	2,000 C
11.	L102	KAMAMALU BUILDING, ASBESTOS REMOVAL AND BUILDING RENOVATION, OAHU		
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR ASBESTOS MITIGATION AND RENOVATION OF THE APPROXIMATELY 75,000 GROSS SQUARE FOOT KAMAMALU BUILDING.		
		PLANS	150	1
		DESIGN	2,000	152
		CONSTRUCTION	10,849	16,846
		EQUIPMENT	1	1
		TOTAL FUNDING AGS	13,000 C	17,000 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
12.	P104	WASHINGTON PLACE, HEALTH AND SAFETY AND QUEEN'S GALLERY RENOVATION, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT TO ADDRESS IMMEDIATE HEALTH AND SAFETY NEEDS AT WASHINGTON PLACE, PROJECT INCLUDES LEAD BASED PAINT ABATEMENT/ENCAPSULATION, BLDG CODE REQUIREMENTS (STRUCTURAL, ELECTRICAL, PLUMBING, AND VENTILATION) AND ADAAG REQUIREMENTS. ASSOCIATED TO THIS WORK IS RENOVATION FOR BUILDING PRESERVATION WITH THE RETENTION OF EXISTING HISTORIC MATERIAL.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		4,758	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	1,500C	C
			AGS	3,261R	R
12.01.	TI01	STATE CAPITOL BUILDING, RESEAL FIFTH FLOOR ROOF DECK AND RELATED IMPROVEMENTS, OAHU			
		CONSTRUCTION TO UPGRADE WATERPROOFING AND RESEAL THE FIFTH FLOOR ROOF DECK, AND RELATED IMPROVEMENTS, AT THE STATE CAPITOL BUILDING.			
		CONSTRUCTION			8,000
		TOTAL FUNDING	AGS	C	8,000C
12.02.	TI05	LUMP SUM ADVANCE PLANNING, STATEWIDE			
		PLANS FOR THE DEVELOPMENT AND IMPLEMENTATION OF STATEWIDE SPACE NEEDS AND BUILDING ASSET MANAGEMENT PROGRAM TO MORE EFFECTIVELY PLAN FOR STATE OCCUPIED FACILITIES. TARGET AREAS INCLUDE WORKFORCE SPACE NEEDS PLANNING, CIVIC CENTER MASTER PLAN DEVELOPMENT, AND STATE OFFICE BUILDING ASSET MANAGEMENT AND DEVELOPMENT.			
		PLANS			1,000
		TOTAL FUNDING	AGS	C	1,000C
13.		BISHOP MUSEUM, RENOVATION OF PLANETARIUM, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION AND IMPROVEMENT TO BISHOP MUSEUM PLANETARIUM. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		1,498	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	1,500C	C

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
14.		BISHOP MUSEUM, RENOVATION OF POLYNESIAN HALL, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION AND IMPROVEMENT OF THE POLYNESIAN HALL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		999	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	1,000 C	C
15.		LAHAINALUNA HIGH SCHOOL FOUNDATION, MAUI			
		DESIGN AND CONSTRUCTION FOR STADIUM PROJECT, PHASE 2. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		1,699	
		TOTAL FUNDING	AGS	1,700 C	C
SUB201 - CITY AND COUNTY OF HONOLULU					
16.		MAINTENANCE AND REPAIR OF PUBLIC ROADS, OAHU			
		DESIGN AND CONSTRUCTION FOR MAINTENANCE, IMPROVEMENT, AND REPAIR OF PUBLIC ROADS IN THE TWENTIETH REPRESENTATIVE DISTRICT; PROVIDED THAT THE SUMS NOT LAPSE AT THE END OF THE FISCAL BIENNIUM FOR WHICH THE APPROPRIATION IS MADE; PROVIDED THAT ALL MONEYS FROM THE APPROPRIATION THAT ARE ENCUMBERED AS OF JUNE 30, 2014 SHALL LAPSE AS OF THAT DATE.			
		DESIGN		1	1
		CONSTRUCTION		1,999	1,999
		TOTAL FUNDING	CCH	2,000 C	2,000 C
16.01.		HONOULIULI FLOOD MITIGATION, OAHU			
		PLANS AND DESIGN FOR A FLOOD MITIGATION PROJECT IN EWA.			
		PLANS			50
		DESIGN			50
		TOTAL FUNDING	CCH	C	100 C
16.02.		WAIPIO NEIGHBORHOOD PARK, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW BATTING CAGE LOCATED AT WAIPIO NEIGHBORHOOD PARK. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			22
		EQUIPMENT			1
		TOTAL FUNDING	CCH	C	25 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

SUB301 - COUNTY OF HAWAII

16.03.		LTE NETWORK, HAWAII			
		DESIGN AND CONSTRUCTION FOR AN LTE NETWORK FOR AN INTEGRATED PUBLIC SAFETY NETWORK. THIS PROJECT IS BEING CONDUCTED IN PARTNERSHIP WITH THE USDA AND UTILIZES THE 700MZ PUBLIC SAFETY WIRELESS SPECTRUM.			
		DESIGN			1
		CONSTRUCTION			999
		TOTAL FUNDING	COH	C	1,000C

SUB401 - COUNTY OF MAUI

17.		OLD HALEAKALA HIGHWAY SIDEWALK, MAUI			
		PLANS, DESIGN AND CONSTRUCTION OF SIDEWALK ALONG ONE SIDE OF OLD HALEAKALA HIGHWAY FROM KULA HIGHWAY TO PUKALANI STREET; PROVIDED THAT PARTIAL MATCHING FUNDS BE PROVIDED BY THE COUNTY OF MAUI.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			998
		TOTAL FUNDING	COM	C	1,000C
17.01.		WAR MEMORIAL GYMNASIUM, MAUI			
		PLANS, DESIGN, AND CONSTRUCTION FOR AIR CONDITIONING IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			918
		TOTAL FUNDING	COM	C	920C

SUB501 - COUNTY OF KAUAI

18.		FILIPINO COMMUNITY CENTER, KAUAI			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE FILIPINO COMMUNITY CENTER ON KAUAI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			27
		EQUIPMENT			1
		TOTAL FUNDING	COK	C	30C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O	FISCAL M YEAR O
				2011-2012 F	2012-2013 F
18.01.		HANALEI WATER SYSTEM, KAUAI			
		PLANS, DESIGN AND CONSTRUCTION FOR AN EIGHT-INCH DUCTILE IRON WATERLINE TO PROVIDE FIRE PROTECTION FOR HANALEI SCHOOL.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			123
		TOTAL FUNDING COK		C	125C
18.02.		KAUAI PHILIPPINE CULTURAL CENTER, KAUAI			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE PHILIPPINE CULTURAL CENTER ON KAUAI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			1,497
		EQUIPMENT			1
		TOTAL FUNDING COK		C	1,500C"

SECTION 6. Part V, Act 164, Session Laws of Hawaii 2011, is amended:

(1) By amending section 38 to read:

"SECTION 38. Provided that of the general obligation fund appropriation for plans, land acquisition, design, and construction for miscellaneous upgrade and improvements to veterans cemeteries statewide, services to veterans (DEF112), the sum of \$5,300,000 or so much thereof as may be necessary for fiscal year 2011-2012 and/or fiscal year 2012-2013 shall be used for land acquisition,⁵ planning, design and construction for expansion of burial space for the veterans cemetery in Makawao, Maui."

(2) By amending section 48 to read:

"SECTION 48. Provided that of the general obligation fund appropriation for Hawaii health systems corporation (HTH 212), the sum of \$15,000,000 or so much thereof as may be necessary for fiscal year 2011-2012 and the same sum or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended by the Hawaii health systems corporation to correct health and safety deficiencies; provided further that of the total sum:

- (1) \$1,050,000 shall be used to upgrade the emergency power generators at Kona community hospital;
- (2) \$3,000,000 shall be used for facility expansion for imaging, laboratory, pharmacy, and other departments at Maui memorial medical center;
- (3) \$1,345,000 shall be used to upgrade the dietary plumbing and flooring at Maluhia health center;
- (4) \$1,680,000 shall be used for fire sprinklers, smoke detectors, and signage at Maui memorial medical center;

- (5) \$820,000 shall be used to upgrade the dietary electrical system and emergency generator at [Leahi hospital;] Maluhia health center;
- (6) \$1,600,000 shall be used for air conditioning upgrades at Maui memorial medical center;
- (7) \$2,000,000 shall be used for plumbing improvements at Maui memorial medical center;
- (8) \$1,000,000 shall be used for dietary equipment upgrades at Maui memorial medical center;
- (9) \$1,000,000 shall be used for elevator upgrades at Kula hospital; and
- (10) \$1,505,000 shall be used for a new nurse call system at Kula hospital.
- (11) \$2,000,000 shall be used to renovate and upgrade hospital infrastructure to include emergency room improvements at Kohala hospital."
- (3) By adding seven new sections to read:

"SECTION 42.1. Provided that of the general obligation bond fund appropriation for the department of land and natural resource², LNR806), the sum of \$18,520,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for the purposes of state parks improvements, statewide; provided further that of the total sum, \$2,500,000 shall be used for the construction of Central Maui Regional Park, Maui.

"SECTION 48.1. Provided that of the general obligation fund appropriation for Hawaii health systems corporation (HTH 212), the sum of \$20,000,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended by the Hawaii health systems corporation for repair and maintenance projects, including those to correct health and safety deficiencies; provided further that of the total sum:

- (1) \$220,000 shall be used for UST Removal and AST installation at Maui Memorial Medical Center;
- (2) \$1,100,000 shall be used for the replacement of the main water piping at Samuel Mahelona Memorial Hospital;
- (3) \$225,000 shall be used to remove underground storage tanks at Leahi Hospital;
- (4) \$160,000 shall be used to replace the walk-in refrigerator/freezer at Hilo Medical Center;
- (5) \$146,000 shall be used for a new nurse call system at Hilo Medical Center;
- (6) \$650,000 shall be used to replace all windows at Maluhia;
- (7) \$200,000 shall be used for spill prevention control & countermeasure corrections at Hilo Medical Center;
- (8) \$500,000 shall be used for asbestos removal at Samuel Mahelona Memorial Hospital;
- (9) \$3,500,000 shall be used for elevator upgrades at Maui Memorial Medical Center;
- (10) \$700,000 shall be used to replace beds at Maui Memorial Medical Center;
- (11) \$115,000 shall be used to remove deteriorated incinerator stacks at Leahi Hospital;
- (12) \$134,000 shall be used for a new security wall at Hale Hoola, Hilo Medical Center;
- (13) \$201,000 shall be used for hospital renovations at Kau hospital;

- (14) \$650,000 shall be used to reroof the West Wing, River Cottages and Hospital Cottage at Hilo Medical Center;
- (15) \$728,000 shall be used to replace the atrium roof and wall at Hilo Medical Center;
- (16) \$475,000 shall be used to upgrade laundry equipment at Maui Memorial Medical Center;
- (17) \$1,052,000 shall be used for acute hospital repairs at Hilo Medical Center;
- (18) \$220,000 shall be used to replace the deteriorated transformer for Trotter Building at Leahi Hospital;
- (19) \$400,000 shall be used to upgrade the air conditioning and perform additional duct work at Hilo Medical Center;
- (20) \$199,000 shall be used for a plumbing upgrade at Kau Hospital;
- (21) \$350,000 shall be used to replace chiller piping at Hilo Medical Center;
- (22) \$110,000 shall be used to upgrade the facility, including repairing & repainting the cottages and hospital interior, replacing AC vents, and repairing water line leaks at Hale Ho'ola Hamakua;
- (23) \$233,000 shall be used for the demolition of Old Building (Pink Palace) at Hilo Medical Center;
- (24) \$160,000 shall be used to replace the laundry dryers/washers at Hilo Medical Center;
- (25) \$3,300,000 shall be used for facility expansion and renovation and equipment for the Imaging department at Maui Memorial Medical Center;
- (26) \$200,000 shall be used to renovate and upgrade Hospital Kohala Hospital;
- (27) \$53,000 shall be used to replace a failing rock wall along Keola Road at Maluhia;
- (28) \$700,000 shall be used for a new photovoltaic system at Lanai Community Hospital;
- (29) \$1,000,000 shall be used to install photovoltaic panels at Leahi Hospital;
- (30) \$590,000 shall be used to repair spalling and repaint the exterior of Atherton and the Administration building at Leahi Hospital;
- (31) \$235,000 shall be used to renovate the parking lot at Hilo Medical Center;
- (31) \$235,000 shall be used to renovate the parking lot at Hilo Medical Center;²
- (32) \$262,000 shall be used for a walking bridge at Hilo Medical Center;
- (33) \$250,000 shall be used for utility efficient lights at Maui Memorial Medical Center;
- (34) \$200,000 shall be used for an energy efficient audit at Maui Memorial Medical Center;
- (35) \$150,000 shall be used for retrocommissioning and an energy audit at Hilo Medical Center;
- (36) \$75,000 shall be used for retrocommissioning and an energy audit at Hale Ho'ola Hamakua;
- (37) \$75,000 shall be used for retrocommissioning and an energy audit at Ka'u Hospital.

SECTION 52.1. Provided that of the special funds appropriated or authorized for departmental administration and budget division (BUF 101), the

sum of \$21,261 or so much thereof as may be necessary for fiscal year 2011-2012 and the sum of \$23,206 or so much thereof as may be necessary for fiscal year 2012-2013 shall be used for the implementation of a directed leave without pay (DLWOP) program and the exemption of certain non-general funds from the DLWOP program for collective bargaining unit 1; provided that this appropriation shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this section.

SECTION 52.2. Provided that of the general obligation bond fund appropriation for the department of budget and finance, departmental administration and budget division (BUF101), the sum of \$30,000,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be expended for the purposes of the Hawaiian home lands trust fund, statewide; provided further that of the total sum, \$8,000,000 shall be used for the Honokowai water system, including well, storage, and transmission in Leialii, Maui.

SECTION 52.3. Provided that of the general obligation fund appropriation for information processing and communication services (AGS 131), the sum of \$15,000,000 or so much thereof as may be necessary for fiscal year 2012-2013 shall be used for the planning and design phase of the statewide enterprise resource planning (ERP) project; provided further that the department of accounting and general services shall report on its progress in implementing phase 1 of the project at least twenty days prior to the 2013 regular session and as of June 30, 2013, to apprise the legislature of recommendations of the available options for ERP systems and other solutions that best meet the needs of the State of Hawaii.

SECTION 53.1. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
G-170A	\$ 5,775 C

SECTION 53.2. Any law to the contrary notwithstanding, the appropriations under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
G-142	\$ 956 C
G-143	23,168 C
H-1	11,670 C"

(4) By amending section 54 to read:

“SECTION 54. Any law to the contrary notwithstanding, the appropriations under Act 289, Session Laws of Hawaii 1993, section 127, as amended and renumbered by Act 252, Session Laws of Hawaii 1994, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-01	\$ 46,824 E
C-02	3,986,198 B
C-02	2,926 E
C-03	17,175 B
C-03	14,898 E
C-04	139,487 E
C-06	455,551 E
C-10	39,606 B
C-10	21,314 E
C-11	260,079 B
C-11	2,012,635 E
C-12	325,452 B
C-13	91,464 B
C-14	1,627,377 B
C-14	131,435 E
C-15	2,644,754 B
C-16	2,217,398 B
C-18	2,208,106 B
C-19	1,063 B
C-19	10,887 E
C-21	1,577,737 B
C-21	236,062 E
<u>G-120</u>	<u>17,922 C</u>

(5) By amending section 55 to read:

“SECTION 55. Any law to the contrary notwithstanding, the appropriations under Act 218, Session Laws of Hawaii 1995, section 99, as amended and renumbered by Act 287, Session Laws of Hawaii 1996, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-01	\$ 2,356,749 B
C-01	205,883 E
C-02	654,500 B
C-02	1,000,000 E
C-04D	281,250 B
C-06	16,385,029 B
C-06B	72,665 B
C-08	135,541 B
C-10	172,730 B
C-10	60,216 E
<u>G-97</u>	<u>10,368 C</u>
<u>G-98</u>	<u>27,848 C</u>
<u>K-31A</u>	<u>6,046 C</u>

(6) By amending section 56 to read:

“SECTION 56. Any law to the contrary notwithstanding, the appropriations under Act 328, Session Laws of Hawaii 1997, section 140A, as amended and renumbered by Act 116, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-03	\$ 134,298 B
C-10A	794,861 B
C-37A	295,898 B
C-42	2,163,815 B
C-48	7,336,453 B
C-67	79,000 B
C-73	29,037 B
C-75	2,895 B
C-76	3,649 B
<u>G-118</u>	<u>1,279 C</u>
<u>G-120</u>	<u>26,214 C"</u>

(7) By amending section 58 to read:

"SECTION 58. Any law to the contrary notwithstanding, the appropriations under Act 259, Session Laws of Hawaii 2001, section 91, as amended and renumbered by Act 177, Session Laws of Hawaii 2002, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-04	\$ 927,443 B
C-05	2,460,595 B
C-07B	2,500 B
C-08	88,132 B
C-11C	64,878 B
C-11F	642,418 B
C-14	487,632 B
<u>C-39</u>	<u>450,000 B</u>
<u>C-49</u>	<u>325,000 B"</u>

(8) By amending section 59 to read:

"SECTION 59. Any law to the contrary notwithstanding, the appropriations under Act 200, Session Laws of Hawaii 2003, section 77, as amended and renumbered by Act 41, Session Laws of Hawaii 2004, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-01	\$ 252,700 B
C-03	443,162 B
C-06	1 E
C-07.01	30,764 B
C-09.01	182,080 E
C-09.02	306,924 B
C-13	1,000,000 B
<u>C-25</u>	<u>400,000 B</u>
<u>C-36</u>	<u>250,000 B</u>
<u>C-36</u>	<u>1,000,000 E</u>
<u>K-11.01</u>	<u>319,640 C"</u>

(9) By amending section 60 to read:

“SECTION 60. Any law to the contrary notwithstanding, the appropriations under Act 178, Session Laws of Hawaii 2005, section 85, as amended and renumbered by Act 160, Session Laws of Hawaii 2006, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-03	\$ 156,895 B
C-11	180,200 B
C-12	260,078 B
C-15	5,191 B
C-15	121,539 X
C-16	5,000 B
C-20	570,046 X
C-23	304,388 B
C-26	329,822 B
C-29	4,120 B
<u>C-53</u>	<u>375,000 B</u>
<u>C-54</u>	<u>500,000 B</u>
<u>C-64</u>	<u>41,000 D</u>
<u>C-89</u>	<u>120,000 E</u>
<u>C-89</u>	<u>480,000 N”</u>

(10) By amending section 61 to read:

“SECTION 61. Any law to the contrary notwithstanding, the appropriations under Act 213, Session Laws of Hawaii 2007, section 125, as amended and renumbered by Act 158, Session Laws of Hawaii 2008, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-24	\$ 148,948 R
C-35	1,500,000 B
C-36	3,950,000 B
<u>C-38.01</u>	<u>26,525,000 E</u>
<u>C-41</u>	<u>1,500,000 B</u>
<u>C-41</u>	<u>1,000 N</u>
<u>C-42</u>	<u>5,000,000 B</u>
<u>C-42</u>	<u>1,000 N</u>
<u>C-44</u>	<u>700,000 B</u>
<u>C-49</u>	<u>500,000 B</u>
<u>C-52</u>	<u>796,000 B</u>
<u>C-68</u>	<u>95,000 E</u>
<u>C-68</u>	<u>380,000 N”</u>

(11) By amending section 62 to read:

“SECTION 62. Any law to the contrary notwithstanding, the appropriations under Act 162, Session Laws of Hawaii 2009, section 62, as amended and renumbered by Act 180, Session Laws of Hawaii 2010, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

ACT 106

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-8.03</u>	<u>\$ 1,300,000 C</u>
<u>A-13</u>	<u>2,301,000 C</u>
<u>A-17</u>	<u>6,500,000 C</u>
<u>B-2</u>	<u>851,000 C</u>
<u>B-3</u>	<u>120,000 C</u>
<u>B-7</u>	<u>226,000 C</u>
<u>B-9</u>	<u>200,000 C</u>
<u>C-23</u>	<u>33,585,000 E</u>
<u>C-49</u>	<u>130,200,000 E</u>
<u>C-53</u>	<u>300,000 B</u>
<u>C-91</u>	<u>550,000 E</u>
<u>D-3.01</u>	<u>100,000 C</u>
<u>D-4</u>	<u>944,100 C</u>
<u>E-1</u>	<u>3,600,000 C</u>
<u>E-2</u>	<u>450,000 C</u>
<u>E-6</u>	<u>3,000,000 C</u>
<u>E-8.01</u>	<u>750,000 C</u>
<u>E-8.02</u>	<u>180,000 C</u>
<u>F-10</u>	<u>1,500,000 C</u>
<u>G-14</u>	<u>50,000 B</u>
<u>G-17</u>	<u>380,000 B</u>
<u>G-22.01</u>	<u>300,000 B</u>
<u>G-23</u>	<u>195,000 B</u>
<u>G-35</u>	<u>775,000 B</u>
<u>G-36.02</u>	<u>375,000 B</u>
<u>G-43</u>	<u>100,000 B</u>
<u>G-51</u>	<u>50,000 B</u>
<u>G-52</u>	<u>375,000 B</u>
<u>G-61</u>	<u>500,000 B</u>
<u>G-71.01</u>	<u>500,000 B</u>
<u>G-71.03</u>	<u>39,000 B</u>
<u>G-85.01</u>	<u>750,000 B</u>
<u>G-87.01</u>	<u>500,000 B</u>
<u>G-93</u>	<u>110,000 C</u>
<u>G-93.01</u>	<u>345,000 C</u>
<u>G-94</u>	<u>70,000,000 E</u>
<u>G-102</u>	<u>23,825,000 C</u>
<u>G-105</u>	<u>3,000,000 C</u>
<u>H-1.03</u>	<u>25,000 C</u>
<u>I-2</u>	<u>250,000 C</u>
<u>K-3</u>	<u>4,889,000 C</u>
<u>K-7</u>	<u>234,000 C</u>
<u>K-11.03</u>	<u>1,300,000 C</u>
<u>K-15.02</u>	<u>125,000 C”</u>

SECTION 7. Act 200, Session Laws of Hawaii 2003, section 77, as amended by Act 41, Session Laws of Hawaii 2004, section 5, is amended by amending Item C-74 to read as follows:

“V94 HONOAPIILANI HIGHWAY, REPLACEMENT OR REHABILITATION OR BOTH
OF HONOLUA BRIDGE, MAUI

DESIGN FOR REPLACEMENT OR
REHABILITATION OR BOTH OF A
CONCRETE TEE-BEAM BRIDGE ON
HONOAPIILANI HIGHWAY IN THE VICINITY
OF HONOLUA BAY. THIS PROJECT IS
DEEMED NECESSARY TO QUALIFY FOR
FEDERAL AID FINANCING AND/OR
REIMBURSEMENT.

LAND ⁷				750
TOTAL FUNDING	TRN		E	150 E
	TRN		N	600 N”

SECTION 8. Act 178, Session Laws of Hawaii 2005, section 85, as amended by Act 160, Session Laws of Hawaii 2006, section 5, is amended by amending Item C-122 to read as follows:

“V094 HONOAPIILANI HIGHWAY, REPLACEMENT OR REHABILITATION OR
BOTH OF HONOLUA BRIDGE, MAUI

LAND ACQUISITION FOR REPLACEMENT
OR REHABILITATION OR BOTH OF A
CONCRETE TEE-BEAM BRIDGE ON
HONOAPIILANI HIGHWAY IN THE VICINITY
OF HONOLUA BAY TO INCLUDE BRIDGE
RAILINGS AND OTHER IMPROVEMENTS.
THIS PROJECT IS DEEMED NECESSARY TO
QUALIFY FOR FEDERAL AID FINANCING
AND/OR REIMBURSEMENT.

LAND				600
TOTAL FUNDING	TRN		E	120 E
	TRN		N	480 N”

SECTION 9. Act 213, Session Laws of Hawaii 2007, section 125², as amended by Act 158, Session Laws of Hawaii 2008, section 5, is amended by amending Item C-75 to read as follows:

“C-75 SP0303 KAHEKILI HIGHWAY, OAHU

PLANS AND DESIGN FOR HIGHWAY
WIDENING AND OTHER IMPROVEMENTS
TO [~~ACCOMMODATE A CONTRAFLOW~~
~~LANE FROM THE VICINITY OF HAIKU~~
~~ROAD TO HUI IWA STREET~~] PROVIDE
CORRIDOR CAPACITY AND OPERATIONAL
IMPROVEMENTS FROM LIKELIKE
HIGHWAY TO KAMEHAMEHA HIGHWAY.
THIS PROJECT IS DEEMED NECESSARY TO
QUALIFY FOR FEDERAL AID FINANCING
AND/OR REIMBURSEMENT.

PLANS				1,000 E	1 N
DESIGN					1,000 E
TOTAL FUNDING	TRN		1,000 E		1,000 E
	TRN		N		1 N” ²

SECTION 10. Act 162, Session Laws of Hawaii 2009, section 62, as amended by Act 180, Session Laws of Hawaii 2010, section 5, is amended by amending Item C-75 to read as follows:

ACT 106

"C-75 S271 INTERSTATE ROUTE H-1 AND MOANALUA FREEWAYS
IMPROVEMENTS, PUULOA INTERCHANGE TO KAPIOLANI
INTERCHANGE, OAHU

CONSTRUCTION FOR ADDITIONAL LANES
ON THE H-1 FREEWAY ~~(EASTBOUND-
LANES FROM THE VICINITY OF MIDDLE-
STREET TO THE VICINITY OF VINEYARD-
BOULEVARD)~~ FROM THE VICINITY OF THE
PUULOA INTERCHANGE TO THE VICINITY
OF THE KAPIOLANI INTERCHANGE. THIS
PROJECT IS DEEMED NECESSARY TO
QUALIFY FOR FEDERAL AID FINANCING
AND/OR REIMBURSEMENT

CONSTRUCTION				100,000
TOTAL FUNDING	TRN	E		20,000 E
	TRN	N		80,000 N" ²

SECTION 11. Act 162, Session Laws of Hawaii 2009, section 62, as amended by Act 180, Session Laws of Hawaii 2010, section 5, is amended by amending Item C-118 to read as follows:

"V097 PUUNENE AVENUE ~~(WIDENING)~~ IMPROVEMENTS⁵, ~~(WAKEA AVENUE)~~
KAMEHAMEHA AVENUE TO KUIHELANI HIGHWAY, MAUI

CONSTRUCTION FOR THE WIDENING
OF PUUNENE AVENUE FROM ~~(WAKEA-
AVENUE)~~ KAMEHAMEHA AVENUE TO
KUIHELANI HIGHWAY FROM TWO TO
FOUR LANES, BICYCLE FACILITIES, AND
SAFETY IMPROVEMENTS. THIS PROJECT
IS DEEMED NECESSARY TO QUALIFY
FOR FEDERAL AID FINANCING AND/OR
REIMBURSEMENT.

CONSTRUCTION				4,000
TOTAL FUNDING	TRN	E		800 E
	TRN	N		3,200 N"

SECTION 12. Act 162, Session Laws of Hawaii 2009, section 62, as amended by Act 180, Session Laws of Hawaii 2010, section 5, is amended by amending Item C-120.01 to read as follows:

"120.01. MAKAWAO AVENUE, MAUI

LAND ACQUISITION, DESIGN, AND
CONSTRUCTION TO EXTEND LEFT
TURN LANE AT MAKAWAO AVENUE TO
HALEAKALA HIGHWAY, PROVIDED THAT
THE COUNTY OF MAUI SHALL PROVIDE
MATCHING FUNDS EQUALING HALF THE
TOTAL APPROPRIATION. THIS PROJECT
IS DEEMED NECESSARY TO QUALIFY
FOR FEDERAL AID FINANCING AND/OR
REIMBURSEMENT.

LAND				1
DESIGN				1
CONSTRUCTION				2,498
TOTAL FUNDING	TRN	E		500 E
	TRN	N		2,000 N"

SECTION 13. Act 162, Session Laws of Hawaii 2009, section 62, as amended by Act 180, Session Laws of Hawaii 2010, section 5, is amended by amending Item A-8.04 to read as follows:

"8.04. GALBRAITH ESTATE, OAHU

LAND ACQUISITION TO ACQUIRE LANDS
CURRENTLY OWNED BY THE GEORGE
GALBRAITH ESTATE IN CENTRAL OAHU.
THIS PROJECT IS DEEMED NECESSARY TO
QUALIFY FOR FEDERAL AID FINANCING
AND/OR REIMBURSEMENT

LAND		[+3,000]	13,001
TOTAL FUNDING	AGR	C	13,000C
	AGR	N	1N"

SECTION 14. Part VI, Act 164, Session Laws of Hawaii 2011, is amended as follows:

(1) By adding a new section as follows:

"SECTION 66.1. RENTAL MOTOR VEHICLE CUSTOMER FACILITY REVENUE BONDS. The department of transportation is authorized to issue rental motor vehicle customer facility revenue bonds for airport capital improvement program projects relating to consolidated rental car facilities authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds with debt service cost to be paid from the rental motor vehicle customer facility charge special funds, as authorized by section 261-5.6, Hawaii Revised Statutes, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, any additional principal amount as may be necessary by the department to pay interest on the rental motor vehicle customer facility revenue bonds during the estimated period of construction of the capital improvements program project for which the rental motor vehicle customer facility revenue bonds are issued, to establish, maintain, or increase reserves for the rental motor vehicle customer facility revenue bonds and to pay the expenses of issuance of the bonds. The rental motor vehicle customer facility revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on rental motor vehicle customer facility revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from the rental motor vehicle surcharge tax and the rental motor vehicle customer facility charge special fund pursuant to section 261-5.6, Hawaii Revised Statutes, as amended, and as determined by the department. The expenses of the issuance of such rental motor vehicle customer facility revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the rental motor vehicle customer facility charge special fund as determined by the department.

The governor, in the governor's discretion, is authorized to use the rental motor vehicle customer facility charge special fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by rental motor vehicle customer facility revenue bond funds; provided that the governor shall submit a report to the legislature of all uses of this authority for the previous twelve month period from December 1 to November 30 no later than thirty days prior to the convening of the 2013 regular sessions."

SECTION 15. Part VII, Act 164, Session Laws of Hawaii 2011, is amended:

(1) By adding a new section to read as follows:

“SECTION 72.1. Provided that in the event that the authorized appropriations specified for a capital improvement project listed in this Act are insufficient and where the source of funding is designated as airport passenger facility charge funds, the governor may make supplemental allotments from the airport revenue fund or airport revenue bond funds, or transfer unrequired balances from other unlapsed projects in this Act or prior appropriation acts that authorized the use of airport passenger facility charge funds; provided further that such supplemental allotments shall not be used to increase the scope of the project; provided further that such supplemental allotments shall not impair the ability of the fund to meet the purposes for which it was established; provided further that the governor at the governor’s discretion, is authorized to increase the passenger facility charge fund authorization ceiling for the program to accommodate the expenditure of such funds.”

(2) By adding a new section to read:

“SECTION 95.1. Notwithstanding section 37-74(d)(2), Hawaii Revised Statutes, section 95 of this Act, and any other law to the contrary that authorizes the department of education to transfer funds under its control, no funds appropriated for fiscal year 2012-2013 for school based budgeting (EDN 100) shall be transferred to any other program ID; and provided further that if any funds appropriated for fiscal year 2012-2013 for school based budgeting (EDN 100) are transferred out of the program or expended for purposes not related to the program, no funds appropriated for fiscal year 2012-2013 for state administration (EDN 300) shall be expended.”

(3) By amending section 96 to read as follows:

“SECTION 96. Notwithstanding any provision to the contrary, the director of finance, with the approval of the governor, shall transfer into retirement benefit - state (BUF 741) \$88,200,000 for fiscal year 2011-2012 [~~and \$88,200,000 for fiscal year 2012-2013~~] for labor savings attributable to collective bargaining agreements for all bargaining units and pursuant to any executive memoranda that results in salary savings for all employees not included under collective bargaining in respective state agencies; provided further that the governor shall submit a report to the legislature within five days of each transfer that shall include the date of the transfer, the amount of the transfer, the program ID from which funds are transferred, and the collective bargaining unit for which the transfer was made; and provided further that the governor shall submit to the legislature a summary report for all transfers by December 1 for the previous twelve-month period.”

(4) By amending section 97 to read as follows:

“SECTION 97. Notwithstanding any provision to the contrary, the director of finance, with the approval of the governor, shall transfer into health premium payments - state (BUF 761) \$50,000,000 for fiscal year 2011-2012 [~~and \$50,000,000 for fiscal year 2012-2013~~]; provided further that in making each transfer, the governor shall consider the legislature’s intent that the administration assess state needs and make appropriate reductions to programs that are consistent with an effort to reprioritize state government; provided further that the governor shall submit a report to the legislature within five days of each use of this authority that shall include the date of the assessment, the amount of the assessment, the program ID from which funds were assessed, a detailed explanation of the reason for which funds were transferred from a particular program ID, including a detailed report of any performance measurements or standards used in evaluating such assessment, and the impact to the program ID from

which funds are transferred; from and provided further that the governor shall submit to the legislature a summary report for all transfers by December 1 for the previous twelve-month period.”

(5) By adding a new section to read:

“SECTION 128.1 Provided that the department of human services shall transmit an interim assistance reimbursement agreement to the Social Security Administration in all cases where a general assistance recipient has filed for the federal supplemental security income assistance; provided further that the department shall prepare a report that shall include, but not limited to, the following:

- (1) The number of general assistance recipients who applied for supplemental security income;
- (2) The number of general assistance recipients who signed the interim assistance reimbursement agreement;
- (3) The number of interim assistance reimbursement agreements transmitted to the Social Security Administration;
- (4) The number of general assistance cases that were denied supplemental security income benefits;
- (5) The number of cases where the department of human services was not reimbursed due to the missing interim assistance reimbursement agreement;
- (6) The total amount of funds not reimbursed to the department of human services due to the missing interim assistance reimbursement agreement; and
- (7) The total number of overpayment claims established for the amount of funds not reimbursed;

provided further that the report shall include actual data for fiscal year 2011-2012, actual and projected data for fiscal year 2012-2013, and other appropriate historic data that is available; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2013 regular session.”

(6) By amending section 129 to read as follows:

“SECTION 129. Provided that the department of Hawaiian home lands shall prepare a financial plan for the ensuing six years that shall include projected amounts and sources of revenue, details of projected expenditures, projected fund balances, and descriptions of major projects and methods of financing; and provided further that the department shall submit the plan to the legislature no later than thirty days prior to the convening of the 2012 and 2013 regular [session-] sessions.”

(7) By adding a new section to read as follows:

Section 129.1 Provided that the state auditor conduct a financial and management audit of the department of Hawaiian home lands homestead services division (HSD) for fiscal year 2011-2012, and report on the status of the direct, insured, and guarantee loan programs administered by HSD; provided further that the financial and management audit of HSD include or address the following:

- (1) Total amount of the direct, insured and guarantee loans, related delinquencies, issues relating to the processes and procedures of the direct and indirect loans, and their impact on the department’s mission and goals;

- (2) Responsibilities of the HSD that are not adequately achieved due to inadequate resources;
- (3) Issues relating to HSD's strategic and financial plan, its budgeting process, and its process of forecasting financial needs to address its loan program; and
- (4) The method for determining priorities for expenditures with HSD; provided further that HSD, its staff, and other relevant persons or agencies are requested to cooperate with and assist the state auditor, and to provide information requested by the auditor; and provided further that the state auditor submit a report of its findings and recommendations no later than October 1, 2012.
- (8) By amending section 131 to read as follows:

"SECTION 131. Provided that [~~of the general fund appropriation for the department of education~~], ~~excluding charter schools, no funds for fiscal year 2012-2013 shall be expended for home-to-school transportation costs not mandated by state or federal law; provided further that the department~~] shall prepare a report that includes:

- (1) A comprehensive analysis of alternatives for providing student transportation, including mandated student transportation services, including but not limited to the elimination of transportation services not mandated by law, route consolidation and reduction scenarios, methods of reducing contracted costs, implementation of transportation services with state personnel and/or buses, partnerships with county agencies, and the use of tripper service as defined in 49 CFR 605.3;
- (2) A cost benefit analysis of each alternative identified;
- (3) A prioritized listing of student transportation routes, the reason the route is a priority, the projected number of students serviced, and the projected cost of providing transportation service for the route;
- (4) An examination of fee schedules and evaluation of various pricing strategies;
- (5) An evaluation of how student transportation is successfully administered and costs are managed and paid for in at least four other jurisdictions;
- (6) Recommendations on the options identified in the report; and
- (7) Identification of the actual costs for all student transportation services, including mandated, for the prior two fiscal years and projected costs for the current fiscal year by means of financing, contract, and route and identification of those costs;

provided further that the department shall submit the report to the legislature no later than forty days prior to the convening of the 2012 regular session; and provided further that the legislature may appropriate funds for student transportation services not mandated by state or federal law upon receipt and evaluation of the report."

- (9) By adding a new section to read as follows:

"SECTION 131.1. Provided that the department of education shall prepare a report on section 302A-1301, Hawaii Revised Statutes, that includes the following:

- (1) Information and calculations for each fiscal year from fiscal year 2009-2010 to 2011-2012 on the amount and proportion of the department's operating budget that was expended for administrative costs and the amount and proportion of the department's operat-

ing budget that was expended by principals, by means of financing; and

- (2) The department's plan that will enable it to comply with the requirements of section 302A-1301(b), Hawaii Revised Statutes, for fiscal year 2012-2013;

and provided further that the department submit the report to the legislature no later than thirty days prior to the convening of the 2013 regular session."

- (10) By adding a new section to read as follows:

"SECTION 131.2. Provided that the director of finance shall ensure that non-facility per-pupil general fund amounts allocated for department of education and charter school students are equal on an annualized fiscal year basis; provided further that, notwithstanding any other law to the contrary, for fiscal year 2012-2013, the director of finance shall:

- (1) Determine the sum of general fund appropriations made for the department of education and charter school student non-facility costs;
- (2) Determine the sum of department of education and charter school student enrollment based upon verified actual student enrollment counts;
- (3) Determine a per-pupil amount by dividing the sum of general fund appropriations determined under paragraph (1) by the sum of student enrollment determined under paragraph (2);
- (4) Transfer a general fund amount between the department of education and charter schools prior to November 1, 2012, that will provide each with a per-pupil allocation equal to the amount determined on an annualized fiscal year basis under paragraph (3); and
- (5) Account for all calculations and transfers made pursuant to this section in a report to the legislature, governor, department, and charter schools within ten days of any transfer made pursuant to this section;

and provided further that for the purposes of this section, all general fund appropriations for EDN100, EDN200, EDN300, and EDN400 shall be considered non-facility appropriations for the department of education."

- (11) By adding a new section to read as follows:

"SECTION 132.1. Provided that the University of Hawaii shall prepare a plan to prevent growth in the university's repair and maintenance backlog, systemwide, through the use of its special fund revenues; provided further that the plan shall include but is not limited to the following:

- (1) The estimated value of the university's repair and maintenance backlog, categorized by campus and types of projects;
- (2) Amounts that must be expended each year to prevent the repair and maintenance backlog from growing, categorized by campus and types of projects;
- (3) Planned expenditures, by campus, types of projects, and funding sources; and
- (4) An update on current staffing authorized to implement the university's capital renewal, including status of positions;

provided further that the plan shall cover the six-year planning period following fiscal year 2012-2013; provided further that the plan shall not rely on the use of general funds or general obligation bond funds to fund repair and maintenance projects after fiscal year 2012-2013; provided further that the University of Ha-

waii shall submit the plan to the legislature no later than thirty days prior to the convening of the 2013 regular session."

(12) By adding a new section to read as follows:

"SECTION 132.2. Provided that the University of Hawaii shall prepare a report on all of its revenue sources that includes the following:

- (1) A description of each source of revenue to include identification of the source and amounts;
- (2) The actual and projected uses for each source of revenue identified by specific categories for expenditure and amounts; and
- (3) Identification of all obligations, projected obligations, and amounts placed on each source of revenue in excess of those identified in paragraph (2), including but not limited to revenues and reserves required to issue and pay the debt service on bonds, fund other debt instruments, fund projected collective bargaining increases, and initiate or expand programs;

provided further that the report shall cover actual and projected data for fiscal year 2012-2013 and projections for the subsequent six-year planning period; provided further that the University of Hawaii shall submit the report to the legislature no later than thirty days prior to the convening of the 2013 regular session."

(13) By adding a new section to read as follows:

"SECTION 133.1. Provided that the department of public safety shall prepare a report on the justice reinvestment initiative that shall include the following:

- (1) Information on the change in status of inmates affected by the initiative, including the number returned to the State from non-state facilities, number enrolled in reentry programs, and number released from custody;
- (2) Detail of all actual and projected savings and costs; and
- (3) Discussion of successes and challenges of the initiative;

provided further that the report shall include to-date and projected data for the current fiscal year to fiscal year 2015-2016; provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2013 regular session."

(14) By adding a new section to read:

"SECTION 133.2. Provided that every executive department and agency shall prepare a report on overtime use in a format prescribed by the director of finance that shall include but not be limited to:

- (1) Amounts budgeted and expended, or projected to be expended, for overtime, by program ID and means of financing, for each year, from fiscal year 2009-2010 to 2014-2015;
- (2) Amounts and values of compensatory time awarded and used, or projected to be awarded and used, by program ID and means of financing, for each year, from fiscal year 2009-2010 to 2014-2015;
- (3) Amounts and values of compensatory time balances held by employees, by program ID and means of financing, as of June 30, 2012;
- (4) A listing of all positions whereby the sum of the value of overtime paid and compensatory time awarded for fiscal year 2011-2012 exceeds twenty per cent of the position's base salary, to include the program ID, position number, means of financing, position title,

bargaining unit, salary range level, salary, number of overtime hours worked, amount of overtime paid, amount and value of compensatory time received, and total amount and value of compensatory time accumulated;

- (5) Identification of the source and amount of funds used for overtime expenditures that exceed amounts budgeted for overtime in paragraph (1), by program ID and means of financing;
- (6) Comparative data, by program ID and means of financing, including amounts budgeted and expended for salaries, number of positions authorized, number of positions filled, number of positions vacant, and relevant ratios and percentages;
- (7) An analysis of whether the amounts described in paragraphs (1) through (4) are appropriate; identification and discussion of significant circumstances that require the use of overtime; identification and discussion of specific divisions and programs that use significant amounts of overtime; and identification and discussion of all instances in which there is suspected abuse of overtime use; and
- (8) Specific strategies the department or agency intends to implement to reduce overtime use, goals for reducing amounts expended for overtime and for compensatory time awarded by program ID and means of financing, and a timeline for implementation;

provided further that the director of finance shall require the submission of the reports to the department of budget and finance for review and compilation, as appropriate, and that all data be as current as practicable; provided further that the director of finance shall consider the information contained in the reports in the development of the fiscal biennium 2013-2015 executive budget request; provided further that the department of budget and finance shall submit the compiled report and a statement documenting any actions taken in consideration of the report to the legislature no later than thirty days prior to the convening of the 2013 regular session; provided further that any agency or department that does not provide the information required under this section to the department of budget and finance shall not expend any funds for overtime after the date the report is due to the legislature.”

(15) By adding a new section to read:

“SECTION 133.3. Provided that every executive department and agency shall prepare a report on overpayments in a format prescribed by the director of finance that shall include but not be limited to:

- (1) Names, dates of overpayments, number of incidents, gross amount overpaid, amount recovered, balance, category of the balance, reason for overpayment, status of recovery, and balances referred to the department of the attorney general;
- (2) Procedures implemented to prevent overpayments, information on challenges in adhering to the procedures, and an assessment of whether the procedures are appropriate and sufficient; and
- (3) Detailed explanations for each overpayment that occurred during the preceding one year period and descriptions of efforts taken to recover each overpayment balance;

provided further that the department of the attorney general shall prepare an additional report providing information on the status of all overpayments it has been referred; provided further that the director of finance shall require the submission of the reports to the department of budget and finance for review and compilation, as appropriate, and that the information provided be as current as practicable; provided further that the department of budget and finance shall

submit the compiled report to the legislature no later than thirty days prior to the convening of the 2013 regular session.”

(16) By adding a new section to read as follows:

“SECTION 133.4. Provided that, to the extent practicable, the director of finance shall require that, except for labor savings adjustments assumed for collective bargaining savings, the personal services budget journal details developed for fiscal year 2012-2013 appropriations under this Act and developed for the fiscal biennium 2013-2015 executive appropriations request not contain any negative amounts; provided further that the negative personal services amounts shall be allocated to positive personal services amounts; provided further that the budget journal details shall reflect planned expenditures for fiscal year 2012-2013 and fiscal biennium 2013-2015, as applicable.”

(17) By adding a new section to read as follows:

“Section 134. Provided that of the special fund and general obligation bond fund appropriations for the department of land and natural resources, natural area reserves and watershed management (LNR 407), the sum of \$2,500,000 in special funds and the sum of \$2,500,000 in general obligation bonds or so much as may be necessary for fiscal year 2012-2013 shall be expended for watershed initiatives statewide to encourage public and private partnerships that enhances both public and private interests; and provided further that the department of land and natural resources shall submit a report to the legislature detailing the expenditure plan for watershed related appropriations no later than September 1, 2012; and provided further that the department of land and natural resources shall prepare a report detailing the implementation of the watershed initiative to include the following:

- (1) Progress on the implementation of the program with the use of state funds, including general obligation bond funds and special funds;
- (2) Information on obtaining and using other available funding sources and efforts to obtain additional funds to match state appropriations;
- (3) An updated expenditure and implementation plan;
- (4) Contributions from private landowners, both financial and in-kind, for the current fiscal year and a schedule of future commitments made by private landowners; and
- (5) Discussion of achievements and challenges encountered in advancing the initiative;

and provided further that the department shall submit the report to the legislature no later than thirty days prior to the convening of the 2013 regular session.”

SECTION 16. MISCELLANEOUS. If any portion of this Act or its application to any person, entity, or circumstance is held to be invalid for any reason, then the legislature declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 17. In the event manifest clerical, typographical or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

SECTION 18. Material to be repealed is bracketed and stricken. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the bracketed material or the underscoring.⁸

SECTION 19. Nothing in this Act shall affect the validity or continuing effectiveness of any provisions of Act 164, Session Laws of Hawaii 2011, not repealed or modified by this Act.

SECTION 20. EFFECTIVE DATE. This Act shall take effect upon its approval.

(Approved June 8, 2012.)

Notes

1. Prior to amendment "division" appeared here.
2. So in original.
3. Prior to amendment "Payments" appeared here.
4. Prior to amendment "Hanamaulu" appeared here.
5. Should be underscored.
6. Should not be underscored.
7. Prior to amendment "design" appeared here. "Land" should be underscored.
8. Edited pursuant to HRS §23G-16.5.

ACT 107

H.B. NO. 1800

A Bill for an Act Relating To The Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act shall be known and may be cited as the Judiciary Supplemental Appropriations Act of 2012.

SECTION 2. Act 61, Session Laws of Hawaii 2011, is amended by amending part II to read as follows:

"PART II PROGRAM APPROPRIATIONS

SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 2011, and ending June 30, 2013. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

PROGRAM APPROPRIATIONS				APPROPRIATIONS	
ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F

The Judicial System

1. JUD101 - COURTS OF APPEAL

OPERATING

JUD

JUD

79.00*
6,835,851 A
243,261 W

79.00*
[-6,835,851 A]
6,725,035 A
243,261 W

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
2.	JUD310 - FIRST JUDICIAL CIRCUIT			1,057.50 *	[-1,057.50*]
	OPERATING		JUD	71,483,812 A	1,064.50 * [-71,483,812 A]
			JUD	41.00 *	69,591,109 A 41.00 *
			JUD	4,002,620 B	4,002,620 B
3.	JUD320 - SECOND JUDICIAL CIRCUIT			205.00 *	[-205.00*]
	OPERATING		JUD	14,777,500 A	207.00 * [-14,777,500 A]
					14,179,324 A
4.	JUD330 - THIRD JUDICIAL CIRCUIT			223.00 *	[-223.00*]
	OPERATING		JUD	17,416,310 A	227.00 * [-17,416,310 A]
					16,815,118 A
5.	JUD350 - FIFTH JUDICIAL CIRCUIT			97.00 *	[-97.00*]
	OPERATING		JUD	6,709,385 A	99.00 * [-6,709,385 A]
					6,482,545 A
6.	JUD501 - JUDICIAL SELECTION COMMISSION			1.00 *	1.00 *
	OPERATING		JUD	90,248 A	[-90,248 A] 85,940 A
7.	JUD601 - ADMINISTRATION			213.00 *	213.00 *
	OPERATING		JUD	15,352,551 A	[-15,352,551 A] 20,636,240 A
			JUD	1.00 *	1.00 *
			JUD	6,930,290 B	6,930,290 B
			JUD	100,000 W	100,000 W
	INVESTMENT CAPITAL		JUD	17,074,000 C	[-14,350,000 C] 21,382,000 C

SECTION 3. Act 61, Session Laws of Hawaii 2011, is amended by amending part IV to read as follows:

“PART IV. CAPITAL IMPROVEMENT PROJECTS

SECTION 7. The sum of [~~\$31,424,000~~] \$38,456,000 appropriated or authorized in part II of this Act for capital improvement projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project, if a combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sums specified for the projects separately. The amount after each cost element and the total funding for each project listed in this part is in thousands of dollars.

CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000'S)		
ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O	FISCAL M YEAR O
	NO.			2011-2012 F	2012-2013 F
A. ECONOMIC DEVELOPMENT					
JUD601 - ADMINISTRATION					
1.		KAAHUMANU HALE ROOF AND LANAI UPGRADES AND IMPROVEMENTS, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR ROOF AND LANAI UPGRADES AND IMPROVEMENTS AT KAAHUMANU HALE, OAHU.			
		PLANS		80	
		DESIGN		360	
		CONSTRUCTION		4,205	
		TOTAL FUNDING	JUD	4,645 C	C
2.		KONA JUDICIARY COMPLEX, HAWAII			
		LAND AND DESIGN FOR A NEW JUDICIARY COMPLEX AT KONA, HAWAII.			
		LAND		4,500	
		DESIGN			7,500
		TOTAL FUNDING	JUD	4,500 C	7,500 C
<u>2.01.</u>		<u>KAUIKEAOULI HALE DOMESTIC WATER BOOSTER AND FIRE PUMP REPLACEMENT, OAHU</u>			
		<u>DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE DOMESTIC WATER BOOSTER AND FIRE PUMP AT KAUIKEAOULI HALE, OAHU.</u>			
		DESIGN			115
		CONSTRUCTION			285
		TOTAL FUNDING	JUD	C	400 C
<u>2.02.</u>		<u>KAUIKEAOULI HALE AIR CONDITIONING SYSTEM CONTROLS EQUIPMENT UPGRADE, OAHU</u>			
		<u>DESIGN AND CONSTRUCTION FOR THE UPGRADES TO THE AIR CONDITIONING SYSTEM CONTROLS EQUIPMENT AT KAUIKEAOULI HALE, OAHU.</u>			
		DESIGN			70
		CONSTRUCTION			157
		TOTAL FUNDING	JUD	C	227 C
3.		KAPUAIWA BUILDING WINDOW REPLACEMENT AND UPGRADE, OAHU			
		DESIGN AND CONSTRUCTION FOR REPLACEMENT AND UPGRADE OF WINDOWS AT KAPUAIWA BUILDING, OAHU.			
		DESIGN		185	
		CONSTRUCTION			1,850
		TOTAL FUNDING	JUD	185 C	1,850 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
4.		KAUIKEAOULI HALE CELLBLOCK UPGRADE AND IMPROVEMENTS, OAHU			
		PLANS AND DESIGN FOR SECURITY-RELATED UPGRADE AND IMPROVEMENTS TO THE MAIN CELLBLOCK AND CUSTODY HOLDING AREAS AT KAUIKEAOULI HALE, OAHU.			
		PLANS		65	
		DESIGN		240	
		TOTAL FUNDING JUD		305C	C
5.		KAAHUMANU HALE FIRE ALARM SYSTEM UPGRADE AND IMPROVEMENTS, OAHU			
		PLANS AND DESIGN FOR FIRE ALARM SYSTEMS UPGRADE AND IMPROVEMENTS AT KAAHUMANU HALE, OAHU.			
		PLANS		7	
		DESIGN		140	
		TOTAL FUNDING JUD		147C	C
6.		KAAHUMANU HALE ELEVATOR SYSTEM UPGRADE AND MODERNIZATION, OAHU			
		PLANS AND DESIGN FOR UPGRADES AND MODERNIZATION TO THE ELEVATORS AT KAAHUMANU HALE, OAHU.			
		PLANS		22	
		DESIGN		270	
		TOTAL FUNDING JUD		292C	C
6.01.		<u>ALI'LOLANI HALE EXTERIOR AND CLOCK TOWER IMPROVEMENTS, OAHU</u>			
		<u>DESIGN AND CONSTRUCTION FOR COMPREHENSIVE BUILDING EXTERIOR IMPROVEMENTS AT ALI'LOLANI HALE, OAHU.</u>			
		DESIGN			40
		CONSTRUCTION			3,000
		TOTAL FUNDING JUD		C	3,040C
6.02.		<u>HOAPILI HALE INTERIOR AIR HANDLING AND SUPPLY SYSTEM IMPROVEMENTS, MAUI</u>			
		<u>DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO INTERIOR AIR HANDLING AND AIR CONDITIONING SUPPLY SYSTEM AT HOAPILI HALE, MAUI.</u>			
		DESIGN			165
		CONSTRUCTION			1,200
		TOTAL FUNDING JUD		C	1,365C
6.03.		<u>HOAPILI HALE AIR CONDITIONING ENERGY MANAGEMENT SYSTEM UPGRADE, MAUI</u>			
		<u>DESIGN AND CONSTRUCTION FOR UPGRADE TO AIR CONDITIONING ENERGY MANAGEMENT SYSTEM AT HOAPILI HALE, MAUI.</u>			
		DESIGN			135
		CONSTRUCTION			975
		TOTAL FUNDING JUD		C	1,110C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2011-2012 F	FISCAL M YEAR O 2012-2013 F
6.04.		<u>HOAPILI HALE AIR CONDITIONING COOLING TOWER BUILDING IMPROVEMENTS, MAUI</u>			
		<u>DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE AIR CONDITIONING COOLING TOWER BUILDING AT HOAPILI HALE, MAUI.</u>			
		<u>DESIGN</u>			100
		<u>CONSTRUCTION</u>			790
		<u>TOTAL FUNDING</u>	<u>JUD</u>	<u>C</u>	<u>890C</u>
[7:		<u>LUMP SUM CIP FOR JUDICIARY FACILITIES, STATEWIDE¹</u>			
		<u>PLANS</u>		250	250
		<u>DESIGN</u>		2,250	2,250
		<u>CONSTRUCTION</u>		2,250	2,250
		<u>EQUIPMENT</u>		250	250
		<u>TOTAL FUNDING</u>	<u>JUD</u>	<u>5,000C</u>	<u>5,000C]</u>
7.		<u>LUMP SUM CIP FOR JUDICIARY FACILITIES, STATEWIDE</u>			
		<u>PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE GENERAL ALTERATIONS, UPGRADES, AND IMPROVEMENTS TO JUDICIARY FACILITIES, STATEWIDE.</u>			
		<u>PLANS</u>		250	250
		<u>DESIGN</u>		2,250	2,250
		<u>CONSTRUCTION</u>		2,250	2,250
		<u>EQUIPMENT</u>		250	250
		<u>TOTAL FUNDING</u>	<u>JUD</u>	<u>5,000C</u>	<u>5,000C</u>
[8:		<u>WAHIAWA DISTRICT COURT FACILITY, OAHU</u>			
		<u>PLANS AND DESIGN FOR A NEW WAHIAWA DISTRICT COURT FACILITY, OAHU.¹</u>			
		<u>PLANS</u>		+	
		<u>DESIGN</u>		1,999	
		<u>TOTAL FUNDING</u>	<u>JUD</u>	<u>2,000C</u>	<u>C]</u>
8.		<u>WAHIAWA COURT FACILITY, OAHU</u>			
		<u>PLANS AND DESIGN FOR A NEW WAHIAWA COURT FACILITY, OAHU.</u>			
		<u>PLANS</u>		1	
		<u>DESIGN</u>		1,999	
		<u>TOTAL FUNDING</u>	<u>JUD</u>	<u>2,000C</u>	<u>C"</u>

SECTION 4. Act 61, Session Laws of Hawaii 2011 is amended by amending part V to read as follows:

"PART V ISSUANCE OF BONDS

SECTION 8. General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in part II and listed in part IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed [\$31,424,000-] \$38,456,000".¹

SECTION 5. Act 61, Session Laws of Hawaii 2011, is amended by adding a new section to part VI to read as follows:

“SECTION 9.1 Any law to the contrary notwithstanding, the appropriations under Act 139, Session Laws of Hawaii 2009, section 8, in the amount indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount</u>	<u>(MOF)</u>
JUD601-4	\$5,000,000	C”

SECTION 6. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 7. If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next regular session.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2012.

(Approved June 8, 2012.)

Note

1. So in original.

ACT 108

H.B. NO. 1838

A Bill for an Act Relating to State Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in article VII, section 13 of the state constitution which states:

“Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance”,

the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the State is set forth in article VII, section 13 of the state constitution, which states in part:

“General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance.”

Article VII, section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including “[r]eimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year” and “[b]onds constituting instruments of indebtedness under which the State . . . incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded” under article VII, section 13.

- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2011-2012 and estimated for each fiscal year from 2012-2013 to 2014-2015, is as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
2008-2009	\$5,034,984,956	
2009-2010	4,841,194,658	
2010-2011	5,102,646,283	
2011-2012	5,395,828,000	\$ 923,694,264
2012-2013	5,758,984,000	945,946,251
2013-2014	5,966,568,000	1,002,543,261
2014-2015	(not applicable)	1,055,818,433

For fiscal years 2011-2012, 2012-2013, 2013-2014, and 2014-2015, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 2008-2009, 2009-2010, and 2010-2011 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 2011, dated November 9, 2011. The net general fund revenues for fiscal years 2011-2012 to 2013-2014 are estimates, based on general fund revenue estimates made as of March 9, 2012, by the council on revenues, the body assigned by article VII, section 7 of the state constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit.

- (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by article VII, section 13 of the state constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of April 1, 2012, is as follows for fiscal year 2012-2013 to fiscal year 2018-2019:

<u>Fiscal Year</u>	<u>Principal and Interest</u>
2012-2013	\$626,428,451
2013-2014	667,040,922
2014-2015	630,466,991
2015-2016	605,695,781
2016-2017	606,036,604
2017-2018	578,752,918
2018-2019	514,151,736

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2019-2020 to fiscal year 2031-2032 when the final installment of \$72,249,725 shall be due and payable.

- (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$233,500,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the state constitution.
- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties.
- (A) As calculated from the state comptroller's bond fund report as of February 29, 2012, adjusted for:
- (i) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in Act 164, Session Laws of Hawaii 2011 (the General Appropriations Act of 2011), to be expended in fiscal year 2012-2013, adjusted for additional appropriations provided in House Bill No. 2012, H.D. 1, S.D. 1, C.D. 1¹ (the Supplemental Appropriations Act of 2012);
 - (ii) Lapses as provided in House Bill No. 2012, H.D. 1, S.D. 1, C.D. 1¹ (the Supplemental Appropriations Act of 2012);
 - (iii) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in Act 61, Session Laws of Hawaii 2011 (the Judiciary Appropriations Act of 2011), to be expended in fiscal year 2012-2013, adjusted for additional appropriations provided in House Bill No. 1800, H.D. 2, S.D. 2, C.D. 1² (the Judiciary Supplemental Appropriations Act of 2012); and
 - (iv) Lapses as provided in House Bill No. 1800, H.D. 2, S.D. 2, C.D. 1² (the Judiciary Supplemental Appropriations Act of 2012);

the total amount of authorized but unissued general obligation bonds is \$2,008,699,756. The total amount of general obligation bonds authorized in this Act is \$436,726,000. The total amount of general obligation bonds previously authorized and unissued, as adjusted, and the general obligation bonds authorized in this Act is \$2,445,425,756.

- (B) As reported by the department of budget and finance, the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$233,500,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the state constitution.
- (5) Proposed general obligation bond issuance. As reported therein for the fiscal years 2012-2013, 2013-2014, and 2014-2015, the State proposed to issue \$325,000,000 in general obligation bonds during the first half of fiscal year 2012-2013, \$450,000,000 in general obligation bonds during the second half of fiscal year 2012-2013, \$500,000,000 in general obligation bonds during the first half of fiscal year 2013-2014, \$350,000,000 in general obligation bonds during the second half of fiscal year 2013-2014, \$500,000,000 in general obligation bonds during the first half of fiscal year 2014-2015, and \$325,000,000 in general obligation bonds during the second half of fiscal year 2014-2015. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the fifth year, the bonds payable in substantially equal annual installments of principal and interest payment with interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds that are proposed to be issued.
- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds that the State proposes to issue during the fiscal years 2012-2013 to 2013-2014 is \$1,625,000,000. An additional \$825,000,000 is proposed to be issued in fiscal year 2014-2015. The total amount of \$1,625,000,000 which is proposed to be issued through fiscal year 2013-2014 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$2,445,425,756 reported in paragraph (4), except for \$820,425,756. It is assumed that the appropriations to which an additional \$820,425,756 in bond issuance needs to be applied will have been encumbered as of June 30, 2014. The \$825,000,000 which is proposed to be issued in fiscal year 2014-2015 will be sufficient to meet the requirements of the June 30, 2014, encumbrances in the amount of \$820,425,756. The amount of assumed encumbrances as of June 30, 2014, is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds proposed to be issued by June 30, 2014, and the amount of June 30, 2014, encumbrances versus the amount of bonds proposed to be issued in fiscal year 2014-2015, the legislature

finds that in the aggregate, the amount of bonds proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.

- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds.

(A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:

- (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
- (ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from the calculation against the debt limit is 1.07 per cent for the ten years from fiscal year 2011-2012 to fiscal year 2020-2021. For the purpose of this declaration, the assumption is made that one per cent of each bond issue shall be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative.

- (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor may be excluded but only to the extent the principal amount of the guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph; provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under article VII, section 13 of the state constitution for the fiscal years 2011-2012, 2012-2013, 2013-2014, and 2014-2015 are as follows:

	Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13 of the State Constitution
<u>Fiscal year</u>	
2011-2012	\$5,797,480,000
2012-2013	6,242,980,000
2013-2014	7,084,480,000
2014-2015	7,901,230,000

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or shall have been established as heretofore provided, may be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to article VII, section 13 of the state constitution shall become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at a net average interest rate, after giving effect to federal subsidy payments, if any, received by the State under and pursuant to the American Recovery and Reinvestment Act of 2009, as may be amended from time to time, not to exceed 5.25 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds, and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

<u>Time of Issuance and Amount to be Counted Against Debt Limit</u>	<u>Debt Limit at Time of Issuance</u>	<u>Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties</u>
1st half FY 2012-2013 \$321,750,000	945,946,251	683,105,852 (2013-2014)
2nd half FY 2012-2013 \$445,500,000	945,946,251	674,659,914 (2013-2014)
1st half FY 2013-2014 \$495,000,000	1,002,543,261	674,659,914 (2013-2014)
2nd half FY 2013-2014 \$346,500,000	1,002,543,261	679,197,007 (2015-2016)
1st half FY 2014-2015 \$495,000,000	1,055,818,433	705,163,823 (2016-2017)
2nd half FY 2014-2015 \$321,750,000	1,055,818,433	722,055,698 (2016-2017)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all

bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 2012, H.D. 1, S.D. 1, C.D. 1¹ (the Supplemental Appropriations Act of 2012) and House Bill No. 1800, H.D. 2, S.D. 2, C.D. 1² (the Judiciary Supplemental Appropriations Act of 2012), passed by the legislature during this regular session of 2012, and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of general obligation bonds so issued shall not exceed \$436,726,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in section 1 and section 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 8, 2012.)

Notes

1. Act 106.
2. Act 107.

ACT 109

H.B. NO. 2495

A Bill for an Act Relating to Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to departmental administration and budget division

(BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2011-2013 the salary increases and other cost adjustments related to "favored nations" provisions in the supplemental agreement negotiated between the University of Hawaii and the exclusive bargaining representative of collective bargaining units (2), (3), (4), and (8) for employees of the University of Hawaii:

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
General Funds	\$68,405	\$72,511
Special Funds	\$1,149	\$1,222
Federal Funds	\$29	\$32
Trust Funds	\$1	\$1
Revolving Funds	\$70	\$76

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the University of Hawaii for expenditure in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to departmental administration and budget division (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2011-2013 the salary increases and other cost adjustments related to "favored nations" provisions authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees of the University of Hawaii, within collective bargaining units (2), (3), (4), and (8):

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
General Funds	\$1,139	\$1,207
Special Funds	\$15	\$15

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the University of Hawaii for expenditure in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. There are appropriated or authorized from the general fund to the Hawaii employer-union trust fund the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2011-2013 the Hawaii employer-union health benefits trust fund costs contained in the supplemental agreement negotiated between the University of Hawaii and the exclusive bargaining representative of collective bargaining unit (8) and authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining unit (8):

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
General Funds		\$788,079

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the director of finance to the University of Hawaii for expenditure in the respective fiscal year for the purposes of this part.

PART IV

SECTION 7. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 8. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2012, and June 30, 2013, of the respective fiscal years, shall lapse as of those dates.

SECTION 9. This Act shall take effect upon its approval and shall apply retroactively to July 1, 2011.

(Approved June 8, 2012.)

ACT 110

S.B. NO. 2324

A Bill for an Act Making Appropriations for Public Employment Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to departmental administration and budget division (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2011-2013 the salary increases and other cost adjustments related to "favored nations" provisions in the supplemental agreement negotiated between the state executive branch and the exclusive bargaining representative of collective bargaining units 2, 3, 4, and 13:

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
General Funds	\$1,716,985	\$1,864,681
Special Funds	\$2,415,209	\$2,576,516
Federal Funds	\$4,661,989	\$4,994,279
Trust Funds	\$159,722	\$173,790
Interdepartmental		
Transfer Funds	\$35,219	\$37,528
Revolving Funds	\$93,967	\$100,683
Special CIP Funds	\$1,085,187	\$1,156,111
American Recovery &		
Reinvestment Act Funds	\$125,216	\$136,697
Other Funds	\$4,682	\$4,977

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to departmental administration and budget division (BUF 101) the following sums, or so much thereof as may be necessary, to fund

for fiscal biennium 2011-2013 the salary increases and other cost adjustments related to "favored nations" provisions authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the state executive branch excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining units 2, 3, 4, and 13:

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
General Funds	\$317,150	\$347,246
Special Funds	\$539,019	\$575,705
Federal Funds	\$829,044	\$899,094
Trust	\$79,297	\$85,206
Interdepartmental		
Transfer Funds	\$5,308	\$5,653
Special CIP Funds	\$89,887	\$96,159
Revolving Funds	\$27,638	\$29,402
American Recovery &		
Reinvestment Act Funds	\$39,741	\$43,530
Other Funds	\$185	\$199

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. There are appropriated or authorized from the general fund to the Hawaii employer-union trust fund the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2012-2013 the Hawaii employer-union health benefits trust fund costs contained in the supplemental agreement negotiated between the state executive branch, department of education, and university of Hawaii and the exclusive bargaining representative of collective bargaining units 2, 3, 4, and 13, and authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the state executive branch, department of education, and university of Hawaii excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining unit 2, 3, 4, and 13:

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
BUF 761	\$0	\$5,157,835

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state agencies for expenditure in the respective fiscal year for the purposes of this part.

PART IV

SECTION 7. There are appropriated or authorized from the sources of funding indicated below to departmental administration and budget division (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2011-2013 the salary increases and other cost adjustments related to provisions in the supplemental agreement negotiated between the state executive branch and the exclusive bargaining representative of collective bargaining units 2, 3, 4, and 13:

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
General Funds	\$331,801	\$362,339
Special Funds	\$1,359,067	\$1,457,557
Trust Funds	\$92,442	\$99,588
Interdepartmental		
Transfer Funds	\$36,297	\$39,408
Revolving Funds	\$102,567	\$110,576
Other Funds	\$207,836	\$221,991

SECTION 8. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART V

SECTION 9. There are appropriated or authorized from the sources of funding indicated below to departmental administration and budget division (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2011-2013 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the state executive branch excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining units 2, 3, 4, and 13:

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
General Funds	\$76,124	\$82,935
Special Funds	\$361,492	\$385,917
Trust	\$13,522	\$14,812
Revolving Funds	\$9,021	\$9,881
Other Funds	\$33,453	\$36,135

SECTION 10. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART VI

SECTION 11. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 12. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2012, and June 30, 2013, of the respective fiscal years, shall lapse as of those dates.

SECTION 13. This Act shall take effect retroactively to July 1, 2011.

(Approved June 8, 2012.)

ACT 111

S.B. NO. 2323

A Bill for an Act Making Appropriations for Public Employment Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to departmental administration and budget division (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2011-2013 the salary increases and other cost adjustments related to "favored nations" provisions in the supplemental agreement negotiated between the department of education and the exclusive bargaining representative of collective bargaining units 2, 3, 4, 6, and 13 for employees of the department of education, including the Hawaii state public library system:

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
General Funds	\$75,038	\$79,312
Special Funds	\$ 704	\$ 748
Federal Funds	\$ 3,743	\$ 3,994
Trust Funds	\$ 112	\$ 120
Interdepartmental		
Transfer Funds	\$ 48	\$ 51
Revolving	\$ 3,881	\$ 4,149

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to departmental administration and budget division (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2011-2013 the salary increases and other cost adjustments related to "favored nations" provisions authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees of the department of education, including the Hawaii state public library system, within collective bargaining units 2, 3, 4, 6, and 13:

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
General Funds	\$514,156	\$543,448
Special	\$ 98,042	\$105,044
Federal Funds	\$ 10,780	\$ 11,535
Trust	\$ 540	\$ 583
Interdepartmental		
Transfer Funds	\$ 155	\$ 165
Revolving	\$ 278	\$ 293

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for expenditure in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. There are appropriated or authorized from the general fund to the Hawaii employer-union trust fund the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2012-2013 the Hawaii employer-union health benefits trust fund costs contained in the supplemental agreement negotiated between the department of education and the exclusive bargaining representative of collective bargaining unit 6 and authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining unit 6:

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
BUF 761	\$0	\$255,744

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state agencies for expenditure in the respective fiscal year for the purposes of this part.

PART IV

SECTION 7. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 8. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2012, and June 30, 2013, of the respective fiscal years, shall lapse as of those dates.

SECTION 9. This Act shall take effect retroactively to July 1, 2011.

(Approved June 8, 2012.)

ACT 112

S.B. NO. 1083

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the general fund to the Hawaii employer-union trust fund the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2012-2013 the Hawaii employer-union health benefits trust fund costs contained in the supplemental agreements negotiated between the University of Hawaii and the exclusive bargaining representative of collective bargaining unit 7 and authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining who belong to the same compensation plans as those officers and employees within collective bargaining unit 7:

	<u>FY 2011-2012</u>	<u>FY 2012-2013</u>
BUF 761	\$	\$ 1,161,598

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state agencies for expenditure in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. Cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be reimbursed wholly or proportionately, as the case may be, from the respective funds.

SECTION 4. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2012, and June 30, 2013, of the respective fiscal years, shall lapse as of those dates.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 8, 2012.)

ACT 113

S.B. NO. 2375

A Bill for an Act Relating to Agricultural-Based Commercial Operations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 165-2, Hawaii Revised Statutes, is amended by amending the definition of "farming operation" to read as follows:

"Farming operation" means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. "Farming operation" ~~also~~ includes but shall not be limited to:

- (1) ~~[Marketed produce at roadside stands or farm markets;]~~ Agricultural-based commercial operations as described in section 205-2(d) (13);
- (2) Noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit;
- (3) Operation of machinery and irrigation pumps;
- (4) Ground and aerial seeding and spraying;
- (5) The application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and
- (6) The employment and use of labor.

A farming operation that conducts processing operations or salt, brackish, or freshwater aquaculture operations on land that is zoned for industrial, commercial, or other nonagricultural use shall not, by reason of that zoning, fall beyond the scope of this definition; provided that those processing operations form an integral part of operations that otherwise meet the requirements of this definition."

SECTION 2. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) Agricultural districts shall include:
- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
 - (2) Farming activities or uses related to animal husbandry and game and fish propagation;
 - (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
 - (4) Wind generated energy production for public, private, and commercial use;
 - (5) Biofuel production, as described in section 205-4.5(a)(15), for public, private, and commercial use;
 - (6) Solar energy facilities; provided that:
 - (A) This paragraph shall apply only to land with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class B, C, D₁ or E; and
 - (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser;
 - (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, agricultural-energy facilities as defined in section 205-4.5(a)(16), vehicle and equipment storage areas, ~~roadside stands for the sale of products grown on the premises;~~ and plantation community subdivisions as defined in section 205-4.5(a)(12);
 - (8) Wind machines and wind farms;
 - (9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
 - (10) Agricultural parks;
 - (11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; ~~and~~
 - (12) Open area recreational facilities~~[-]; and~~
 - (13) Agricultural-based commercial operations, including:
 - (A) A roadside stand that is not an enclosed structure, owned and operated by a producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;
 - (B) Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related

to the producer's agricultural operations, and other food items; and

- (C) A retail food establishment owned and operated by a producer and permitted under chapter 12¹ of the rules of the department of health that prepares and serves food at retail using products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii.

The owner of an agricultural-based commercial operation shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products displayed or sold by the operation meet the requirements of this paragraph.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics."

SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) ~~[Roadside stands for the sale of agricultural products grown on the premises;]~~ Agricultural-based commercial operations as described in section 205-2(d)(13);
- (10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that

are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);

- (11) Agricultural parks;
- (12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:
 - (A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;
 - (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or
 - (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;
- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
- (14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;
- (15) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuels processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

“Appurtenances” means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuels processing facilities.

“Biofuel processing facility” means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

- (16) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less

than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

“Agricultural activity” means any activity described in paragraphs (1) to (3) of this subsection.

“Agricultural-energy enterprise” means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

“Agricultural-energy facility” means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

“Appurtenances” means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

- (17) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, “wireless communication antenna” means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection;
- (18) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, “agricultural education programs” means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2; or
- (19) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser; provided that this use shall not be permitted on lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 15, 2012.)

Note

1. So in original.

A Bill for an Act Relating to Building Permits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that existing building codes and permitting processes are overly burdensome to the State's commercial agriculture and aquaculture industries and add substantial time and costs to establishing or expanding farming and ranching enterprises in the State.

The purpose of this Act is to encourage and support diversified agriculture and agricultural self-sufficiency in the State by providing an exemption from building permit requirements for nonresidential buildings or structures on commercial farms and ranches located outside of the urban district under certain conditions.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§46- Agricultural and aquacultural buildings and structures; no building permit required. (a) Each county shall establish an agricultural buildings and structures exemption list of buildings and structures that are exempt from existing building permit requirements. The list shall be established by each county no later than January 1, 2013. Agricultural buildings, structures, or appurtenances thereto, which are not used as dwelling or lodging units, may be exempted from existing building permit requirements where they are no more than 1,000 square feet in floor area; provided that the aggregate floor area of the exempted agricultural building, structure, or appurtenance thereto shall not exceed 5,000 square feet per zoning lot and the minimum horizontal separation between each agricultural building, structure, or appurtenance thereto is fifteen feet, and the agricultural buildings, structures, or appurtenances thereto are located on a commercial farm or ranch and are used for general agricultural or aquacultural operations, or for purposes incidental to such operations; provided further that:

- (1) The agricultural building, structure, or appurtenance thereto is constructed or installed on property that is used primarily for agricultural or aquacultural operations, and is two or more contiguous acres in area or one or more contiguous acres in area if located in a nonresidential agricultural or aquacultural park;
- (2) Upon completion of construction or installation, the owner or occupier shall provide written notice to the appropriate county fire department and county building permitting agency of the size, type, and locations of the building, structure, or appurtenance thereto. Such written notification shall be provided to the county agencies within thirty days of the completion of the building, structure, or appurtenance thereto. Failure to provide such written notice may void the building permit exemption, which voidance for such failure is subject to the sole discretion of the appropriate county building permitting agency;
- (3) No electrical power and no plumbing systems shall be connected to the building or structure without first obtaining the appropriate county electrical or plumbing permit, and all such installations shall be installed under the supervision of a licensed electrician or plumber, as appropriate, and inspected and approved by an appropriate county or licensed inspector; and

- (4) Disposal of wastewater from any building or structure constructed or installed pursuant to this section shall comply with chapter 342D.

(b) For purposes of subsection (a), the following buildings and structures and appurtenances thereto shall be included in each county's agricultural building and structures exemption list:

- (1) Nonresidential manufactured pre-engineered commercial buildings and structures consisting of no more than 1,000 square feet that have no electrical power and have no potable water, sewage, or other plumbing related services, or have such electrical or plumbing related services installed and inspected in accordance with subsection (a)(3) and (4);
- (2) Single stand alone recycled ocean shipping or cargo containers that are used as nonresidential commercial buildings;
- (3) Notwithstanding the 1,000 square foot floor area restriction in subsection (a), agricultural shade cloth structures, cold frames, or greenhouses not exceeding 20,000 square feet in area per structure; provided that where multiple structures are erected, the minimum horizontal separation between each shade cloth structure, cold frame, or greenhouse is fifteen feet;
- (4) Aquacultural or aquaponics structures, including above-ground water storage or production tanks, troughs, and raceways with a maximum height of six feet above grade, and in-ground ponds and raceways, and piping systems for aeration, carbon dioxide, or fertilizer or crop protection chemical supplies within agricultural or aquacultural production facilities;
- (5) Livestock watering tanks, water piping and plumbing not connected to a source of potable water, or separated by an air gap from such a source;
- (6) Non-masonry fences not exceeding ten feet in height and masonry fences not exceeding six feet in height;
- (7) One-story masonry or wood-framed buildings or structures with a structural span of less than twenty-five feet and a total square footage of no more than 1,000 square feet, including farm buildings used as:
 - (A) Barns;
 - (B) Greenhouses;
 - (C) Farm production buildings including aquaculture hatcheries and plant nurseries;
 - (D) Storage buildings for farm equipment or plant or animal supplies or feed; or
 - (E) Storage or processing buildings for crops; provided that the height of any stored items shall not collectively exceed twelve feet in height and the storage of any hazardous materials shall comply with any and all applicable statutes, regulations, and codes;
- (8) Raised beds containing soil, gravel, cinders, or other growing media or substrates with wood, metal, or masonry walls or supports with a maximum height of four feet; and
- (9) Horticultural tables or benches no more than four feet in height supporting potted plants or other crops;

provided that the buildings, structures, and appurtenances thereto comply with all applicable state and county codes, including but not limited to applicable building, fire, health, safety, and zoning codes and are properly anchored.

(c) In the event that a county fails to establish the agricultural buildings and structures exemption list within the time period as required under subsection (a), the buildings and structures specified in subsection (b) shall constitute that county's agricultural building and structures exemption list.

(d) As used in this section:

"Agricultural building or aquacultural building" means a nonresidential building or structure located on a commercial farm or ranch constructed or installed to house farm or ranch implements, agricultural or aquacultural feeds or supplies, livestock, poultry, or other agricultural or aquacultural products, used in or necessary for the operation of the farm or ranch, or for the processing and selling of farm or ranch products.

"Agricultural operation" means the planting, cultivating, harvesting, processing, or storage of crops, including those planted, cultivated, harvested, and processed for food, ornamental, grazing, feed, or forestry purposes, as well as the feeding, breeding, management, and sale of animals including livestock, poultry, honeybees, and their products.

"Appurtenance" means an object or device in, on, or accessory to a building or structure, and which enhances or is essential to the usefulness of the building or structure, including but not limited to work benches, horticultural and floricultural growing benches, aquacultural, aquaponic, and hydroponic tanks, raceways, troughs, growbeds, and filterbeds, when situated within a structure.

"Aquacultural operation" means the propagation, cultivation, farming, harvesting, processing, and storage of aquatic plants and animals in controlled or selected environments for research, commercial, or stocking purposes and includes aquaponics or any growing of plants or animals in or with aquaculture effluents.

"Manufactured pre-engineered commercial building or structure" means a building or structure whose specifications comply with appropriate county codes, and have been pre-approved by a county or building official.

"Nonresidential building or structure" means a building or structure that is used only for agricultural or aquacultural operations, including an agricultural building or aquacultural building, and is not intended for use as, or used as, a dwelling.

(e) This section shall not apply to buildings or structures otherwise exempted from building permitting or building code requirements by applicable county ordinance.

(f) This section shall not be construed to supersede public or private lease conditions.

(g) This section shall not apply to the construction or installation of any building or structure on land in an urban district."

SECTION 3. (a) The department of the attorney general shall establish a task force to assess any conflicts between applicable state statutes, including section 46- , Hawaii Revised Statutes, county code requirements, and the interest of the State's commercial agriculture and aquaculture industries.

(b) The task force shall consist of the following members:

- (1) A representative from the department of agriculture;
- (2) A representative from each county's building permitting department;
- (3) A representative from the Hawaii Farm Bureau Federation;
- (4) A representative from the Hawaii Aquaculture and Aquaponics Association; and
- (5) A representative from the state fire council.

(c) The task force shall identify and examine any conflicts described in subsection (a) and shall identify and recommend potential resolutions to the governor before December 15, 2012.

(d) Members of the task force shall not be considered employees of the State for purposes of chapter 84, Hawaii Revised Statutes, based solely upon their participation on the task force.

(e) The task force shall be exempt from the requirements of chapter 92, Hawaii Revised Statutes.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved June 15, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 115

H.B. NO. 1764

A Bill for an Act Relating to the Residency of Appointive Officers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 78-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All appointive officers in the service of the government of the State or any county who are employed as department heads and deputies or assistants to a department head shall be citizens of the United States and residents of the State for at least one year immediately preceding their appointment[-]; provided that the foregoing one year residency requirement may be waived by the appointing authority when the appointive officer is required to have highly specialized or scientific knowledge and training and a qualified applicant who is a resident for at least one year is not available to fill the position. All others appointed in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens, nationals, or permanent resident aliens of the United States and residents of the State at the time of their appointment. A national or permanent resident alien appointee shall not be eligible for continued employment unless such person diligently seeks citizenship upon becoming eligible to apply for United States citizenship.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 15, 2012.)

A Bill for an Act Making Appropriations for Claims Against the State, Its Officers, or Its Employees.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The following sums or so much thereof as may be necessary for fiscal year 2011-2012 are appropriated out of the general revenues of the State of Hawaii to the department of the attorney general for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and entities, for claims against the State or its officers or employees for the overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amounts set forth opposite their names:

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	AMOUNT
1. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:	
Elections Systems & Software, Inc. v. Cronin, et al., CAAP-11-0000078	\$1,205,000.00 Settlement
Tanaka, et al. v. State of Hawaii, et al. Civil No. 09-00579, USDC	\$ 73,000.00 Settlement
SUBTOTAL:	\$1,278,000.00
2. DEPARTMENT OF BUDGET AND FINANCE:	
Matsumura v. Board of Trustees of the Employees' Retirement System of the State of Hawaii, CAAP-11-0000106	\$ 120,000.00 Settlement
SUBTOTAL:	\$ 120,000.00
3. DEPARTMENT OF EDUCATION:	
Miljkovic v. State of Hawaii, et al. Civil No. 09-00064 ACK-KSC, USDC	\$ 7,500.00 Settlement
SUBTOTAL:	\$ 7,500.00
4. DEPARTMENT OF LAND AND NATURAL RESOURCES:	
Ah Loo v. State of Hawaii, et al. Civil No. 11-1-0032, Fifth Circuit	\$ 40,000.00 Settlement
Brem, et al. v. State of Hawaii Civil No. 07-1-0176, Fifth Circuit	\$5,459,107.50 Settlement
Weingartner v. State of Hawaii, et al. Civil No. 09-1-1563-07, First Circuit	\$ 90,000.00 Settlement
SUBTOTAL:	\$5,589,107.50

5. DEPARTMENT OF PUBLIC SAFETY:

Gishi v. State of Hawaii, et al. Civil No. 10-1-0198-01, First Circuit	\$ 75,000.00 Settlement
Glessner v. State of Hawaii, et al. MCCP No. 2010-066	\$ 30,000.00 Settlement
Graff, et al. v. State of Hawaii, et al. Civil No. 08-1-0975-05, First Circuit	\$ 156,814.01 Settlement
Kahle, et al. v. Villaflor, et al. Civil No. 10-00764 LEK-KSC, USDC	\$ 100,000.00 Settlement
Timas v. State of Hawaii, et al. Civil No. 10-00517, USDC	\$ 60,000.00 Settlement
Tagaca v. State of Hawaii, Civil No. 09-1-2098-09, First Circuit	\$ 35,000.00 Settlement

SUBTOTAL: \$ 456,814.01

6. OFFICE OF HAWAIIAN AFFAIRS:

Tsachev v. State of Hawaii, et al. Civil No. 09-1-1207-05	\$ 162,500.00 Settlement
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SUBTOTAL: \$ 162,500.00

Total (SECTION 1): \$7,613,921.51

The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

PART II

SECTION 2. The following sum or so much thereof as may be necessary for fiscal year 2011-2012 is appropriated out of the state highway fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	AMOUNT
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DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:

Kuahiwinui, et al. v. Zelo's, et al. Civil No. 08-1-0067, Fifth Circuit	\$ 210,000.00 Settlement
Ackerman v. Kuahiwinui, et al. Civil No. 08-1-0069, Fifth Circuit	

SUBTOTAL: \$ 210,000.00

TOTAL (SECTION 2) \$ 210,000.00

The sum appropriated shall be expended by the department of transportation, highways division, for the purposes of this Act.

PART III

SECTION 3. The following sum or so much thereof as may be necessary for fiscal year 2011-2012 is appropriated out of the airport revenue fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	AMOUNT
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DEPARTMENT OF TRANSPORTATION, AIRPORTS DIVISION:

Wolfe v. State of Hawaii, et al.	\$ 60,000.00
Civil No. 10-1-1029-05, First Circuit	Settlement

SUBTOTAL:	\$ 60,000.00
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TOTAL (SECTION 3)	\$ 60,000.00
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The sum appropriated shall be expended by the department of transportation, airports division, for the purposes of this Act.

PART IV

SECTION 4. The sums hereinabove may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in several amounts hereinabove set forth or in lesser amounts deemed appropriate, upon checks issued by the comptroller; provided that departments shall obtain the approval of the attorney general before payment of any claim can be made.

SECTION 5. Notwithstanding the sums hereinabove stated as interest upon judgments against the State, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which the statute applies.

SECTION 6. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2013, shall lapse.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

PART V

SECTION 8. This Act shall take effect upon its approval.

(Approved June 15, 2012.)

ACT 117

H.B. NO. 2848

A Bill for an Act Relating to Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the most recent information on the use of drugs, alcohol, and tobacco reveals a disturbing rise in the use of these substances among the native Hawaiian population. Many studies conducted both nationally and statewide show native Hawaiians to be at particularly high risk for substance abuse. Among students in the eighth and tenth grades, native Hawaiian children rank highest among all ethnic groups in the use of these substances. The studies also show that substance abuse starts at an early age and, if not addressed, will:

- (1) Lead to more serious offenses, which break down family structures spiritually, psychologically, socially, and economically;
- (2) Create many health hazards and problems; and
- (3) Lead to other serious problems, such as poverty, homelessness, and a growing dependence on both legal and illegal drugs, which in turn may lead to child abuse, family abuse, sexual abuse, and other serious, life-threatening crimes.

The legislature finds that a pu'uhonua, or wellness center, based on Hawaiian cultural practices will help the native Hawaiian community and the community at-large. Unquestionably, many high-risk persons need to be cared for in a much more sensitive intervention program that will address solutions that will alleviate their problems. The greatest potential to stem the tide of this horrific situation lies in the creation of a pu'uhonua comprising a culturally-based substance abuse treatment and intervention program that takes a holistic approach based upon cultural identity and strength to get to the core of substance abuse. The cultural practices of pule, ho'oponopono, aloha 'aina, mahi'ai, la'au lapa'au, and aloha will help create a sensitive setting. These cultural practices have been successful in the past, possessing the optimal potential to heal an individual. A culturally-based pu'uhonua will restore and maintain a better atmosphere and relationship between family, friends, community, and society.

The legislature further finds that the site formerly used as the Kulani correctional facility in east Hawaii would be an ideal site for such a wellness center. It is a place of deep spirituality for the Hawaiian people and, pragmatically, it has the infrastructure and historical precedent for use in sustainable living.

The legislature also finds that incarcerated individuals who do not pose a threat to public safety should be allowed to work in the community on community projects that accommodate their level of skill. For example, the island of Hawaii has hundreds of acres of invasive plant species such as *Miconia calvescens*, a species of tree from South America which, according to the Smithsonian Institution, is the one plant that could destroy the Hawaiian forest. Other areas of the State are infested with albizia and banana poka, which also choke and kill native plants. The eradication of invasive species such as *Miconia calvescens* has largely been the work of volunteers. Given the need for invasive species control and other work in local communities and the overcrowding of the State's correctional facilities, the legislature finds that allowing incarcerated persons who do not pose a public safety threat to work in the community would provide valuable services while creating opportunities for those persons to learn new skills and apply them in ways that benefit the State.

The purpose of this Act is to:

- (1) Reduce recidivism, prevent crime, and ensure long-term positive change by developing a plan to create a wellness center that rees-

establishes highly recognized native Hawaiian cultural practices to restore the overall well-being of persons, families, and the native Hawaiian community; and

- (2) Create a pilot program to allow incarcerated persons on the Big Island to work in the community on community projects that benefit the local community and the State.

SECTION 2. The department of public safety, in cooperation with Ohana Ho'opakele and other restorative justice groups, is directed to prepare a plan for the creation of a pu'uhonua, or wellness center, on lands owned or controlled by the State. The public land development corporation shall assist in determining an appropriate site for the center; provided that the site formerly used as the Kulani correctional facility on the island of Hawaii shall be given preference, unless another site will provide a greater possibility of success.

The department of public safety shall submit a report to the legislature on its plan, findings, and recommendations, including the factors used in determining site selection, and any budget requests necessary to achieve the purposes of this Act, no later than twenty days prior to the convening of the regular session of 2013.

SECTION 3. (a) There is created within the department of public safety a work release pilot program on the island of Hawaii to allow incarcerated persons on the island of Hawaii to work on community projects on the island that benefit the local community and the State; provided that persons who perform work outside a correctional facility as part of the work release pilot program pose a low risk to public safety, as determined by the director of public safety.

(b) The department of land and natural resources shall collaborate with the department of public safety to identify potential community projects on the island of Hawaii that may benefit from inclusion in the pilot program.

(c) The department of public safety may provide for the shelter of incarcerated persons outside of a correctional facility while participating in the work release pilot program on the island of Hawaii.

(d) The department of public safety may receive public and private grants for the purposes of this section.

SECTION 4. This Act shall take effect upon its approval; provided that section 3 of this Act shall be repealed on June 30, 2015.

(Approved June 15, 2012.)

ACT 118

S.B. NO. 2508

A Bill for an Act Relating to Campaign Reporting Laws.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-334, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The candidate and treasurer of the candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file preliminary, final, and supplemental reports.

- (1) The filing dates for preliminary reports are:

- (A) ~~[July 31 of the election year;]~~ Thirty calendar days prior to a primary election;

- (B) Ten calendar days prior to a primary, each special, or each nonpartisan election; and
- (C) Ten calendar days prior to a general election; provided that this preliminary report does not need to be filed by a candidate who is unsuccessful in a primary, special, or nonpartisan election, or a candidate who is elected to office in the primary, initial special, or initial nonpartisan election.

~~[Each]~~ The preliminary report filed by the date required under subparagraph (A) shall be current through June 30 [for the report filed on July 31], and all other preliminary reports shall be current through the fifth calendar day before the filing deadline of those other preliminary reports.

- (2) The filing date for the final primary report is twenty calendar days after a primary, initial special, or initial nonpartisan election. The report shall be current through the day of the applicable election.
- (3) The filing date for the final election period report is thirty calendar days after a general, subsequent, subsequent special, or subsequent nonpartisan election. The report shall be current through the day of the applicable election. The final election period report shall be filed by a candidate who is unsuccessful in a primary, initial special, or initial nonpartisan election or a candidate who is elected to office in the primary, initial special, or initial nonpartisan election.
- (4) The filing dates for supplemental reports are:
 - (A) January 31 after an election year; and
 - (B) July 31 after an election year.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 15, 2012.)

ACT 119

S.B. NO. 2228

A Bill for an Act Relating to Pseudoephedrine.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 329-75, Hawaii Revised Statutes, is amended to read as follows:

"§329-75 Sales of products, mixtures, or preparations containing pseudoephedrine; reporting requirement for wholesalers. (a) Notwithstanding any other law to the contrary, a pharmacy or retailer may sell or distribute to a person without a prescription products containing not more than 3.6 grams per day[;] or not more than nine grams per thirty-day period of pseudoephedrine, without regard to the number of transactions~~[; of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers as the only active ingredient or in combina-~~

tion with other active ingredients]; provided that the pharmacy or retailer shall comply with the following conditions:

- (1) The product, mixture, or preparation shall be sold or distributed from an area not accessible by customers or the general public, such as behind the counter or in a locked display case and where the ~~[seller]~~ pharmacy or retailer delivers the product directly into the custody of the ~~[purchaser;]~~ person purchasing or obtaining the substances;
- (2) Any person purchasing or otherwise ~~[acquiring]~~ obtaining any product, mixture, or preparation shall produce ~~[proper]~~ valid, government-issued identification containing the photograph, date of birth, printed name, signature, and address of the ~~[individual]~~ person purchasing or obtaining the substance;
- (3) The pharmacy or retailer shall ~~[record, in an electronic log on software provided by the narcotics enforcement division of the department and approved by the administrator;]~~ maintain a written or electronic log of required information for each sale of a nonprescription product containing pseudoephedrine, including:
 - (A) ~~The date and time of any transaction under paragraph (2);~~
 - (B) ~~The name, address, and date of birth of the person[;]~~ purchasing or obtaining the substance;
 - (C) ~~The type of identification provided by the [individual] person purchasing or obtaining the substance[;]~~ and identification number;
 - (D) ~~The agency issuing the identification used; and~~
 - (E) ~~The name of the compound, mixture, or preparation, and the amount; and~~
- (4) The pharmacy or retailer shall:
 - (A) ~~Record the information required under paragraph (3) on an electronic worksheet on software provided by the narcotics enforcement division of the department; and~~
 - (B) ~~Electronically mail the worksheet record to the narcotics enforcement division once a month;~~ require every person purchasing or obtaining the substance to sign a written or electronic log attesting to the validity of the information.

The information shall be retained by the pharmacy or retailer for a period of two years. The written or electronic log shall be capable of being checked for compliance against all state and federal laws, including interfacing with other states to ensure comprehensive compliance, and shall be subject to random and warrantless inspection by county or state law enforcement officers.

(b) Beginning January 1, 2013, before completing a sale of an over-the-counter product containing pseudoephedrine, a pharmacy or retailer shall electronically submit the information required pursuant to subsection (a) to the National Precursor Log Exchange administered by the National Association of Drug Diversion Investigators; provided that the National Precursor Log Exchange is available to pharmacies or retailers in the State without a charge for accessing the system. The pharmacy or retailer shall not complete the sale if the system generates a stop sale alert. Except in the case of negligence, wantonness, recklessness, or deliberate misconduct, any pharmacy or retailer using the electronic sales tracking system in accordance with this subsection shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection and shall be immune from liability to any third party, unless the

pharmacy or retailer has violated this subsection, in relation to a claim brought for such violation.

(c) If a pharmacy or retailer selling an over-the-counter product containing pseudoephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement under this section, the pharmacy or retailer shall maintain a written log or an alternative electronic recordkeeping mechanism until such time as the pharmacy or retailer is able to comply with the electronic sales tracking requirement.

(d) A pharmacy or retailer selling an over-the-counter product containing pseudoephedrine may seek an exemption from submitting transactions to the electronic sales tracking system in writing to the administrator stating the reasons therefore. The administrator may grant an exemption for good cause shown, but in no event shall the exemption exceed one hundred eighty days. Any pharmacy or retailer that receives an exemption shall maintain a hard copy log and shall require the person purchasing or obtaining the substance to provide the information required under this section before completion of any sale. The log shall be maintained as a record of each sale for inspection by any law enforcement officer or inspector of the board of pharmacy during normal business hours.

(e) The National Association of Drug Diversion Investigators shall forward Hawaii transaction records in the National Precursor Log Exchange to the narcotics enforcement division of the department of public safety weekly and provide real-time access to National Precursor Log Exchange information through the National Precursor Log Exchange online portal to law enforcement in the State as authorized by the narcotics enforcement division; provided that the narcotics enforcement division executes a memorandum of understanding with the National Association of Drug Diversion Investigators governing access to the information; provided further that the department of public safety narcotics enforcement division shall establish the electronic tracking system in conjunction with the State's existing narcotics tracking system beginning no later than January 1, 2015.

(f) This system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the pharmacy or retailer, or person purchasing or obtaining the substance, violating the quantity limits set forth in this section. The system shall contain an override function that may be used by a pharmacy or retailer selling pseudoephedrine who has a reasonable fear that an imminent bodily harm will result if the sale is not completed. Each instance where the override function is used shall be logged by the system.

(b) (g) No person shall knowingly purchase, [possess,] receive, or otherwise acquire products containing more than 3.6 grams per day or more than nine grams [of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine or its salts, isomers, or salts of optical isomers within a thirty-day period,] per thirty-day period of pseudoephedrine, except that this limit shall not apply to any quantity of such product, mixture, or preparation dispensed pursuant to a valid prescription.

(e) (h) Any person who violates [subsection] subsections (b) through (g) is guilty of a class C felony.

(d) (i) The department, by rule, may exempt other products from this section, if the administrator finds that the products are not used in the illegal manufacture of methamphetamine or other controlled substances. A manufacturer of a drug product may apply for removal of the product from this section if the product is determined by the administrator to have been formulated in

such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

~~[(e)]~~ (j) Notwithstanding any other provision of this chapter to the contrary, every wholesaler shall report to the administrator all sales made to any retailer, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, as the only active ingredient or in combination with other active ingredients. The department shall provide a common reporting form that contains at least the following information about the product, mixture, or preparation:

- (1) Generic or other name;
- (2) Quantity sold;
- (3) Date of sale;
- (4) Name and address of the wholesaler; and
- (5) Name and address of the retailer.

~~[(f)]~~ (k) Intentional or knowing failure of a retailer or pharmacy to transmit any information as required by this section shall be a misdemeanor and shall result in the immediate suspension of that retailer's ability to sell any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers as the only active ingredient or in combination with other active ingredients until authorized by the administrator."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 15, 2012.)

ACT 120

S.B. NO. 2797

A Bill for an Act Relating to Psychotropic Medications in Medicaid.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The number of individuals who require treatment for mental health issues is growing. Prescription medications such as psychotropic drugs have become increasingly expensive and are not always effective for every patient. With the current difficult economic climate, alternatives must be explored to implement cost-saving measures while preserving an appropriate level of care.

In 2010, the twenty-fifth legislature passed House Bill No. 2774, which was enacted as Act 205, Session Laws of Hawaii 2010. Part I of Act 205 amended section 346-59.9, Hawaii Revised Statutes, by allowing the requirement of trials of generic antidepressant and anti-anxiety medications before covering such brand name medications for new prescriptions while still maintaining the requirement of medical assistance coverage of brand name antipsychotic medications. The result has been to preserve access to necessary medications while encouraging the use of generic equivalents or comparatively effective generic medications. However, Act 205 has a repeal date of June 30, 2012, at which time

section 346-59.9 would be reenacted in the form in which it read on the day prior to the act's effective date.

The purpose of this Act is to make permanent the successful changes to the psychotropic medication statute by repealing the sunset date for those provisions in section 9 of Act 205.

SECTION 2. Act 205, Session Laws of Hawaii 2010, is amended by amending section 9 to read as follows:

"SECTION 9. This Act shall take effect on July 1, 2010; provided that on June 30, 2012, part II and part III of this Act shall be repealed and [sections] section 346-15 [and 346-59.9], Hawaii Revised Statutes, shall be reenacted in the form in which [they] it read on the day prior to the effective date of this Act; and provided further that section 6 of this Act shall take effect retroactive to May 1, 2010."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 29, 2012.

(Approved June 15, 2012.)

ACT 121

S.B. NO. 2632

A Bill for an Act Relating to Fee Time Share Interests.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The joint legislative investigative committee established pursuant to Senate Concurrent Resolution No. 226, adopted during the regular session of 2007, identified serious shortcomings relating to the bureau of conveyances. Act 120, Session Laws of Hawaii 2009, was adopted in response to the findings of the committee. Act 120 was intended to ease the backlog in land court recording and registration by, among other things, transferring fee simple time share interests from the land court system to the regular system.

Act 120 requires that, upon presentation of a deed or any other instrument affecting a fee time share interest, the assistant registrar of the land court shall not file the same in the land court. Rather, the assistant registrar shall:

- (1) Update the certificate of title for all fee time share interests in the time share plan;
- (2) Record in the regular system the updated certificate of title for each fee time share interest in the time share plan;
- (3) Record in the regular system the deed or other instrument presented for recording; and
- (4) Cancel the certificate of title for each fee time share interest in the time share plan.

Once the certification of title for a fee time share interest is recorded, that time share interest is no longer subject to the land court pursuant to chapter 501, Hawaii Revised Statutes. From then on, all deeds and other instruments affecting the fee time share interest shall be recorded in the regular system. This process is known as deregistration of fee time share interests.

The legislature finds that the task of updating and recording the certificates of title for all fee time share interests concurrently has exceeded the ca-

ACT 121

capacity of the land court, particularly in light of the approximately three year backlog of land court recordings and registration existing at the time that Act 120 took effect.

Accordingly, the purpose of this Act is to ease the backlog in land court recording and registration by:

- (1) Requiring all fee time share interests to be recorded in the regular system rather than the land court, as of the effective date of this Act; and
- (2) Streamlining the procedure for deregistering all remaining fee time share interests.

SECTION 2. Section 501-20, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Date and time of deregistration” means:

- (1) The date and time that a certificate of title for land, other than a fee time share interest, is recorded pursuant to section 501-261;
- (2) The date and time, if prior to July 1, 2012, when a certificate of title for a fee time share interest was recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter, whether such certificate of title was or is certified by the assistant registrar prior to, subsequent to, or on July 1, 2012;
- (3) July 1, 2012, at 12:01 a.m. for all other fee time share interests then in existence and for which a certificate of title was not recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter prior to July 1, 2012; and
- (4) For all fee time share interests not yet in existence as of July 1, 2012, at 12:01 a.m., the date and time of recordation of the declaration, declaration of annexation, or other document or instrument establishing such fee time share interest.”

2. By amending the definitions of “deregistered land” and “fee time share interest” to read:

““Deregistered land” means [land that is the subject of a certificate of title recorded pursuant to section 501-261.];

- (1) Land, other than a fee time share interest, that is the subject of a certificate of title recorded pursuant to section 501-261;
- (2) A fee time share interest that is the subject of a certificate of title recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter prior to July 1, 2012, whether the certificate of title is certified by the assistant registrar on, before, or after July 1, 2012; and
- (3) All other fee time share interests.

“Fee time share interest” means a time share interest, other than a leasehold time share interest, that [consists], at any time on or after July 1, 2011, consists or consisted of, or includes [a present,] or included an undivided interest in registered land, including but not limited to an undivided interest in one or more fee simple condominium apartments or units established in whole or in part on registered land.”

SECTION 3. Section 501-71, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Deregistration pursuant to sections 501-261 to 501-269 shall not alter or revoke the conclusive nature or effect of a decree of registration, which

shall continue to quiet the title to the deregistered land as to all claims arising prior to the ~~[recording of the certificate of title pursuant to section 501-261,]~~ date and time of deregistration of the land, except claims as would not otherwise be barred under this chapter if the lands were not registered.”

SECTION 4. Section 501-261, Hawaii Revised Statutes, is amended to read as follows:

~~“[§501-261]~~ Deregistration of fee interests. (a) The registered owner of the fee interest in registered land may submit a written request to the assistant registrar to deregister the land under this chapter.

- (1) Any written request for deregistration shall include proof of title insurance in the amount of the value of the land to be deregistered and a written waiver of all claims against the State relating to the title to the land arising after the date of deregistration.
- (2) Upon presentation to the assistant registrar ~~[for filing or recording of any instrument, document, or paper conveying or encumbering a fee time share interest or any interest therein, or upon the]~~ of a written request [under subsection (d) of the] for deregistration by the registered owner of the fee interest in registered land, the assistant registrar shall not register the same, but shall:
 - ~~[(1)]~~ (A) Record in the bureau of conveyances, pursuant to chapter 502, the current certificate of title for the fee interest in the registered land ~~[or the registered land in which the fee time share interest includes an undivided interest];~~ provided that:
 - (A) ~~Prior]~~ prior thereto, the assistant registrar shall note on the certificate of title all documents and instruments that have been accepted for registration and that have not yet been noted on the certificate of title; ~~and]~~ for the registered land;
 - ~~[(B)]~~ If separate certificates of title have been issued for individual fee time share interests in the time share plan, the assistant registrar shall record in the bureau of conveyances, pursuant to chapter 502, the certificate of title for each fee time share interest in the time share plan;
 - ~~[(2)]~~ (B) Record in the bureau of conveyances, pursuant to chapter 502, the ~~[instrument, document, paper, or]~~ written request for deregistration presented to the assistant registrar for filing or recording. The ~~[instrument, document, paper, or]~~ request shall be recorded immediately after the certificate or certificates of title; and
 - ~~[(3)]~~ (C) Cancel the certificate of title.
 - ~~[(b)]~~ (3) The registrar or assistant registrar shall note the recordation and cancellation of the certificate of title in the registration book and in the records of the application for registration of the land that is the subject of the certificate of title. The notation shall state the bureau of conveyances document number for the certificate of title so recorded, the certificate of title number, and the land court application number, map number, and lot number for the land that is the subject of the certificate of title so recorded.
 - ~~[(e)]~~ (4) No order of court shall be required prior to or in connection with the performance of any of the foregoing actions.
 - ~~[(d)]~~ The registered owner of the fee interest in registered land may submit a written request to the assistant registrar to deregister the land under this chapter. Any written request for deregistration shall include proof of title insur-

ance in the amount of the value of the land to be deregistered and a written waiver of all claims against the State relating to the title to the land arising after the date of deregistration.]

(b) The certificate of title for each fee time share interest shall be canceled effective as of the date and time of deregistration of such fee time share interest. Notwithstanding the provisions of section 501-261 in existence prior to July 1, 2012, a fee time share interest for which a certificate of title was not recorded in the bureau of conveyances pursuant to chapter 502 and part II of this chapter prior to July 1, 2012, shall be deregistered on July 1, 2012, at 12:01 a.m.

(1) Beginning on July 1, 2012, and continuing for so long as shall be reasonably necessary in the ordinary course of business, the assistant registrar shall:

(A) Note on the certificate of title for each fee time share interest all documents and instruments affecting the fee time interest:

(i) That were or are registered as of a date and time prior to the date and time of deregistration of the fee time share interest; and

(ii) That were not yet noted on the certificate of title of the fee time share interest as of the date and time of deregistration thereof; and

(B) Certify each certificate of title.

(2) Section 501-196 shall apply to a certificate of title updated pursuant to paragraph (1) upon approval of the same by the assistant registrar, which approval shall be evidenced by a certification of the assistant registrar endorsed upon the certificate of title. A certificate of title for a fee time share interest, including but not limited to a certificate of title recorded prior to July 1, 2012, pursuant to part II of this chapter 501, shall not be considered completed or approved, and shall be subject to modification by the assistant registrar, at any time prior to certification thereof by the assistant registrar. Subsequent to the certification, the certificate of title for a fee time share interest may only be modified pursuant to section 501-196 or as otherwise provided in this chapter.

(3) Upon certification of the certificate of title for a fee time share interest by the assistant registrar, the assistant registrar shall mark the certificate of title "cancelled", note the cancellation of the certificate of title in the registration book, and notify the court of the cancellation. Regardless of the date upon which such administrative acts are performed, the cancellation of the certificate of title for a fee time share interest shall be effective as of the date and time of deregistration of that fee time share interest.

(4) If only part of the land described in the certificate of title consists of a fee time share interest, then upon the petition of the registered owner of that portion of the registered land not constituting a fee time share interest, a new certificate of title shall be issued to such owner for that portion of the registered land not constituting a fee time share interest. If registered land is held in the condominium form of ownership, then for purposes of this subsection each unit for which a separate certificate of title has been issued shall be treated as if it were a separate parcel of registered land.

(5) Except as provided in paragraph (4), no order of court shall be required prior to or in connection with the performance of any of the foregoing actions."

SECTION 5. Section 501-262, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§501-262]]~~ Effect of deregistration. (a) ~~[Upon the recordation in the bureau of conveyances of a certificate of title pursuant to section 501-261:]~~ From and after the date and time of deregistration of registered land:

- (1) The deregistered land shall no longer be registered land for purposes of this chapter;
- (2) No instruments, documents, or papers relating solely to deregistered land shall be filed or recorded with the assistant registrar pursuant to this chapter, but shall instead be recorded in the bureau of conveyances pursuant to chapter 502; and
- (3) Except as otherwise expressly provided in this chapter, chapter 502 shall apply to the deregistered land.

(b) ~~[Reoordation of a certificate of title]~~ Neither voluntary deregistration of land other than a fee time share interest pursuant to section 501-261 nor the mandatory deregistration of any fee time share interest pursuant to part II of this chapter, whether by recordation of a certificate of title in the bureau of conveyances prior to July 1, 2012, or by operation of law thereafter, shall ~~[not]~~ disturb the effect of any proceedings in the land court where the question of title has been determined. All proceedings had in connection with the registration of title that relate to the settlement or determination of title before ~~[that record-~~ing,] a certificate of title for land other than a fee time share interest is recorded pursuant to section 501-261 or a certificate of title for a fee time share interest is certified and all provisions of this chapter that relate to the status of the title, shall have continuing force and effect with respect to the period of time that title remained under the land court system. Those provisions giving rise to a right of action for compensation from the State, including any limits on and conditions to the recovery of compensation and the State's rights of subrogation with respect thereto, shall also continue in force and effect with respect to the period of time that title remained under the land court system.”

SECTION 6. Section 501-264, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A certificate of title for land other than a fee time share interest recorded pursuant to section 501-261, or certified by the assistant registrar in the case of a fee time share interest, shall constitute a new chain of record title in the registered owner of any estate or interest as shown on the certificate of title so recorded~~;~~ or certified, subject only to the following:

- (1) The estates, mortgages, liens, charges, instruments, documents, and papers noted on the certificate of title so recorded~~;~~ or certified;
- (2) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting the liens, shall be deemed to fall within this paragraph only if the same are recorded in the bureau of conveyances as provided by chapter 505;
- (3) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title as recorded~~;~~ or certified, with interest, penalties, and other additions to the tax, which, unless a notice is filed and registered as provided by county real property tax ordinance, shall be for the period of three years from and after the date on which the lien attached, and if proceedings for the

- enforcement or foreclosure of the tax lien are brought within the period, until the termination of the proceedings or the completion of the tax sale;
- (4) State tax liens, if the same are recorded in the bureau of conveyances as provided by section 231-33;
 - (5) Any public highway, or any private way laid out under the provisions of law, when the certificate of title does not state that the boundary of the way has been determined;
 - (6) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed;
 - (7) Any liability to assessments for betterments, or statutory liability that may attach to land as a lien prior to or independent of, the recording or registering of any paper of the possibility of a lien for labor or material furnished in the improvement of the land; provided that the priority of any liability and the lien therefor (other than for labor and material furnished in the improvement of the land, which shall be governed by section 507-43) shall cease and terminate three years after the liability first accrues unless notice thereof, signed by the officer charged with collection of the assessments or liability, setting forth the amount claimed, the date of accrual, and the land affected, is recorded in the bureau of conveyances pursuant to chapter 502 within the three-year period; and provided further that if there are easements or other rights, appurtenant to a parcel of deregistered land, which for any reason have failed to be deregistered, the easements or rights shall remain so appurtenant notwithstanding the failure, and shall be held to pass with the deregistered land until cut off or extinguished in any lawful manner;
 - (8) The possibility of reversal or vacation of the decree of registration upon appeal;
 - (9) Any encumbrance not required to be registered as provided in sections 501-241 to 501-248 and relating to a leasehold time share interest or leasehold interest in deregistered land; and
 - (10) Child support liens that are created pursuant to order or judgment filed through judicial or administrative proceeding in this State or in any other state, the recording of which shall be as provided by chapter 576D."

SECTION 7. Section 502-33, Hawaii Revised Statutes, is amended to read as follows:

"§502-33 Identification of reference to registration of original. [The] (a) If the owner of a fee time share interest acquired title thereto pursuant to a deed or other instrument filed or recorded in the land court pursuant to chapter 501, then the registrar need not accept for recording any deed, mortgage, or other voluntary instrument purporting to convey or affect title to such fee time share interest unless the deed, mortgage, or other voluntary instrument contains a reference to the certificate of title number by which the owner of the fee time share interest acquired title thereto. The term "fee time share interest" as used in this subsection shall have the same meaning as in section 501-20.

(b) Except as otherwise provided in subsection (a), the registrar shall not record any instrument requiring a reference to a prior recorded instrument, unless the same contains a reference to the book and page or document number of

the registration of the original recorded instrument or a statement that the original instrument is unrecorded, as the case may be. Except as otherwise provided, every judgment shall contain or have endorsed on it the State of Hawaii general excise taxpayer identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon registration of the judgment. No amendment, continuation statement, termination statement, statement of assignment, or statement of release relating to security interests in goods which are or are to become fixtures shall be filed unless it complies with the requirements of part 5 of Article 9 of the Uniform Commercial Code. This section does not apply to any document mentioned herein executed prior to April 13, 1915.

The party seeking registration of a judgment shall redact the first five digits of any social security number by blocking the numbers out on the copy of the judgment to be filed or recorded."

SECTION 8. Section 657-33.5, Hawaii Revised Statutes, is amended to read as follows:

"[H§657-33.5]] Deregistered land. In no event shall the period of limitations provided in this part begin prior to the [~~recordation of the certificate of title~~] date and time of deregistration for deregistered land. The terms "date and time of deregistration" and "deregistered land" as used in this section shall have the same meaning as in section 501-20."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2012.

(Approved June 15, 2012.)

ACT 122

S.B. NO. 2695

A Bill for an Act Relating to Livestock Feed.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The cost of feed for livestock production in Hawaii can constitute up to seventy per cent of total production costs, while for mainland producers, this cost amounts to fifty per cent of total production costs. In Hawaii, in 2007, there were five dairies and six egg farms of significant size, with combined gross annual revenues of \$26,400,000. Currently, there are only two dairies and four egg farms of significant size, with combined gross annual revenues of \$16,250,000. Since 2007, two dairies and four egg farms have gone out of business primarily due to the rising cost of feed for livestock animals and the

resulting increases in production costs. Since October 2010, the cost of poultry feed alone has increased approximately \$60 per ton and is expected to rise even further.

Currently, the four remaining egg farms are threatened by closure. Such closures would increase the State's dependence on imported foods and threaten the State's food security and ability to achieve adequate levels of agricultural self-sufficiency. Self-sufficiency is critical to Hawaii's food security and ability to respond effectively in the event of natural disasters or disruptions in transportation.

The closure of local dairies and poultry farms also means that children and adults throughout the State will no longer have the option of selecting fresh, locally produced milk and eggs. Consumers have often expressed interest in obtaining locally produced milk, but the dairies do not produce enough milk to meet public demand. The public has expressed a similar interest in island-fresh beef, pork, chicken, eggs, fish, and seafood.

Locally produced fresh beef, milk, pork, chicken, eggs, fish, and seafood provide essential nutrition to consumers. However, these kinds of food are perishable, and imported products create a greater risk for food spoilage and resultant food-borne illnesses due to the increase in time needed to transport these products from offshore farms to Hawaii consumers.

Without these local agricultural and aquaculture businesses, all beef, milk, pork, chicken, eggs, fish and seafood would have to be imported into the State, requiring up to ten days of shipping before being sold to consumers. An increased shipping time reduces the expected shelf life of these agricultural commodities.

The purpose of this Act is to create a livestock feed feasibility pilot project to assess the viability of and, to the extent feasible, begin growing and processing livestock feed within the State.

SECTION 2. The department of agriculture in collaboration with other research institutions shall implement a livestock feed feasibility pilot project. The project shall:

- (1) Explore the viability of producing and processing livestock feed within the State through scientific research; and
- (2) To the extent feasible, produce and process livestock feed on land as determined by the chairperson of the board of agriculture.

SECTION 3. (a) After the livestock feed feasibility pilot project begins operations, the department of agriculture shall assess the implementation of the pilot project pursuant to section 2 of this Act and submit a report to the legislature no later than December 31, 2014.

(b) The assessment by the department of agriculture shall consider the following information regarding livestock feed production and processing outcomes:

- (1) The inputs and infrastructure required for the processing of livestock feed;
- (2) Types of plants required for livestock feed use;
- (3) Start-up and yearly operational costs of a livestock feed facility;
- (4) Projected revenue stream of a livestock feed facility;
- (5) Parcels of land to be used for producing and processing livestock feed; and
- (6) Prospective markets for processed feed.

(c) The department of agriculture shall determine whether to continue, expand, or end the livestock feed feasibility pilot project based on the results of the department's assessment.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the livestock feed feasibility pilot project; provided that a portion of the funds shall be used to serve as matching funds for a federal construction grant awarded to build a pilot-scale feed mill to assess the operational feasibility of a feed mill in the State.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the agricultural development division of the department of agriculture to reimburse qualified producers of milk, pork, eggs, poultry, and beef, for the cost of feed for beef cattle, dairy cows or goats, hogs, and poultry up to the lesser of \$200,000 or ten per cent of feed costs incurred; provided that feed costs shall be limited to only the feed fed to the qualifying flock or herd and shall not include the feed purchases for resale or gift, or the cost of transportation to Hawaii.

The appropriation made for the purpose authorized under this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that any balance of the appropriation that is not encumbered as of June 30, 2014, shall lapse as of that date.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved June 15, 2012.)

ACT 123

H.B. NO. 2429

A Bill for an Act Relating to the Board of Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide flexibility to the ex officio voting members of the board of agriculture by allowing these members to send one designated representative each on their behalf to board of agriculture meetings when these members are unable to attend. It is not, however, the intent of the legislature that these ex officio voting members rely solely on the attendance of their designated representatives in carrying out their statutory duty to serve on the board of agriculture. In addition, it is the intent of the legislature that on occasions where a designated representative attends a meeting on behalf of the ex officio voting member, the designated representative be a person who has the agricultural background and experience necessary to actively participate in the discussion and decision making of the board of agriculture.

SECTION 2. Section 26-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of agriculture shall be headed by an executive board to be known as the board of agriculture. The board shall consist of ten members:

- (1) One who shall be a resident of the county of Hawaii;
- (2) One who shall be a resident of the county of Maui;
- (3) One who shall be a resident of the county of Kauai;
- (4) Four at large; and
- (5) The chairperson of the board of land and natural resources[;]; the director of business, economic development, and tourism; and the dean of the University of Hawaii college of tropical agriculture and human resources, or their designated representatives, who shall serve as [an] ex officio voting [member;] members.
- [(6) ~~The director of business, economic development, and tourism, who shall serve as an ex officio voting member; and~~
- (7) ~~The dean of the University of Hawaii college of tropical agriculture and human resources, who shall serve as an ex officio voting member;]~~

The majority of the members of the board shall be from the agricultural community or the agricultural support sector. The appointment, tenure, and removal of the members and the filling of vacancies on the board shall be as provided in section 26-34. The governor shall appoint a chairperson of the board from the members.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 15, 2012.)

ACT 124

H.B. NO. 2244

A Bill for an Act Relating to Agriculture Inspectors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that support for the biosecurity program under the department of agriculture is important because of the impact of invasive species to Hawaii’s agriculture, environment, natural resources, public health, and economy. The legislature also finds that the United States Department of Agriculture and other states’ departments of agriculture also face shortages in agriculture inspectors. Therefore, to improve the effectiveness of the biosecurity program, the legislature finds that providing the state department of agriculture with the authority to establish, maintain, and enforce compliance agreements with federal or other state departments of agriculture will allow the federal and other state departments of agriculture and their respective inspectors to work cooperatively with Hawaii’s agriculture inspectors on import and export programs.

The importation of christmas trees is considered a high risk for introduction of invasive species into the State. This measure would allow the Hawaii department of agriculture to enter into compliance agreements with the Oregon and Washington departments of agriculture to monitor the growing and packing of christmas trees to reduce the amount of invasive species that may hitchhike with shipments to Hawaii.

For export, Hawaii's fruits industry, valued at \$30,000,000; vegetable industry, valued at \$75,000,000; and floral and nursery industry, valued at \$100,000,000, are at risk of losing export markets due to quarantine measures imposed by the federal government and other states. To assist the agricultural industry, the legislature recommends that the Hawaii department of agriculture enter into compliance agreements with receiving states to establish origin-inspection programs to ease quarantine restrictions placed on Hawaii's growers.

The purpose of this Act is to authorize the department of agriculture to establish, maintain, and enforce compliance agreements with federal or state departments of agriculture as to the import and export of plant commodities, and to assess fees for conducting inspections required under compliance agreements.

SECTION 2. Section 141-2, Hawaii Revised Statutes, is amended to read as follows:

"§141-2 Rules. Subject to chapter 91, the department of agriculture shall adopt, amend, and repeal rules not inconsistent with law, for and concerning:

- (1) The introduction, transportation, and propagation of trees, shrubs, herbs, and other plants;
- (2) The quarantine, inspection, fumigation, disinfection, destruction, or exclusion, either upon introduction into the State, or at any time or place within the State, of any nursery-stock, tree, shrub, herb, vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root, or rhizome; any nut, fruit, or vegetable; any grain, cereal, or legume in the natural or raw state; any moss, hay, straw, dry-grass, or other forage; any unmanufactured log, limb, or timber; or any other plant growth or plant product unprocessed or in the raw state; any sand, soil, or earth; any live bird, reptile, insect, or other animal, in any stage of development, that is in addition to the so-called domestic animals, which are provided for in section 142-2; and any box, barrel, crate, or other containers in which the articles, substances, or objects have been transported or contained, and any packing material used in connection therewith, that is or may be diseased or infested with insects or likely to assist in the transmission or dissemination of any insect or plant disease injurious, harmful, or detrimental, or likely to become injurious, harmful, or detrimental to the agricultural or horticultural industries or the forests of the State, or that is or may be in itself injurious, harmful, or detrimental to the same [~~(c)~~; provided that included therein may be rules governing the transportation of any of the articles, substances, or objects enumerated above in this section between different localities on any one of the islands within the State~~}]~~;
- (3) The prohibition of importation into the State, from any or all foreign countries or from other parts of the United States, or the shipment from one island within the State to another island therein, or the transportation from one part or locality of any island to another part or locality of the same island, of any specific article, substance, or object or class of articles, substances, or objects, among those enumerated above in this section, that is diseased or infested with insects or likely to assist in the transmission or dissemination of any insect or plant disease injurious, harmful, or detrimental or likely to be injurious, harmful, or detrimental to the agricultural or horti-

cultural industries, or the forests of the State, or that is or may be in itself injurious, harmful, or detrimental to the same;

- (4) The preparation by cargo carriers of manifests of cargo transported into the State or between islands of the State and the submission of the manifests to the department; ~~and~~

- (5) The establishment, maintenance, and enforcement of compliance agreements with federal or state departments of agriculture authorizing agriculture inspectors from the state of origin in the case of imports to the State, or State agricultural inspectors in the case of State exports, to monitor the growing and packing of plant commodities and any treatment procedures to ensure compliance with quarantine laws, and further authorizing the assessment of fees for conducting inspections required under the compliance agreement; and

- ~~[(5)]~~ (6) The manner in which agricultural product promotion and research activities may be undertaken, after coordinating with the agribusiness development corporation.

All rules adopted under this section shall have the force and effect of law.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 15, 2012.)

ACT 125

H.B. NO. 1524

A Bill for an Act Relating to Agricultural Theft.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

“§708- Theft; agricultural product; sentencing. (1) Whenever a person is sentenced under sections 708-830.5, 708-831, 708-832, or 708-833, for an offense involving theft of an agricultural product or commodity, in addition to any penalty prescribed by those sections, the person shall be required to make payment to the property owner for:

- (a) The value of the stolen agricultural product or commodity, pursuant to section 706-646; and
- (b) The cost of replanting the agricultural product or commodity.

(2) For purposes of this section, “agricultural product or commodity” includes:

- (a) Floricultural, horticultural, viticultural, aquacultural, forestry products or commodities; and
- (b) Shrubbery, nuts, coffee, seeds, and other farm or plantation products or commodities,

whether for personal or commercial use.”

SECTION 2. Section 145-22, Hawaii Revised Statutes, is amended to read as follows:

“§145-22 Agricultural commodities; ownership and movement certification. (a) Every person, upon sale of any agricultural commodity or upon transportation of lots of any agricultural commodity of more than two hundred pounds or with a value of at least \$100 that is marketed for commercial purposes, shall complete a certificate describing the commodity, the amount and value of the commodity, and [indicating:] shall include:

- (1) The [seller, owner, buyer, or consignee:] seller's name, residence address, telephone number, and license plate number of any vehicle used by the seller to deliver the commodity to the place of purchase;
- (2) The name of the farm owner and address of origin; [and]
- (3) The name of the buyer or consignee, and destination[-]; and
- (4) The signature of the seller and, upon sale, the signature of the buyer or consignee.

(b) Prior to completing the certificate, the buyer or consignee shall also require the seller to verify the seller's identity by having the seller present a valid photo identification card or license issued to the seller by a federal or state government agency. If the commodity being offered for sale has a value of \$300 or more, the seller shall also provide the buyer with a photocopy of the identification card or license of the seller.

(c) No prospective buyer or consignee shall purchase an agricultural commodity from a seller if the seller does not provide a copy of the ownership and movement certification and verification as required by subsections (a) and (b). Every prospective buyer or consignee shall report an attempted sale that does not meet the requirements of subsections (a) and (b) to the police.

(d) Two copies of the certificate shall accompany the shipment, and [a] one copy each shall be retained by [the person completing the certificate.] the seller and the buyer or consignee. One of the copies of the certificate shall be presented upon request to a state or county law enforcement officer or other officer, employee, or any other person [as described in section 145-25:] authorized and designated by the board of agriculture to investigate and enforce this chapter and all rules adopted by the department pursuant thereto.

~~[(b)]~~ (e) This section shall not apply to the retail sale of an agricultural commodity to the final consumer.”

SECTION 3. Section 145-23, Hawaii Revised Statutes, is amended to read as follows:

“§145-23 Lack of proof of ownership as a violation. The failure of any person who sells, transports, or possesses after sale or transport, agricultural commodities to maintain a certificate of ownership or other written proof of ownership of the agricultural commodity, as described in section 145-22, is a violation of this part[-] and also prima facie evidence of an offense under section 708-831(1)(e).”

SECTION 4. Section 145-25, Hawaii Revised Statutes, is amended to read as follows:

“§145-25 Enforcement; ~~[citation and summons:]~~ criminal penalties. Violations of this part or any rule adopted pursuant thereto ~~[may be enforced by citation and summons issued by:]~~ shall be criminal offenses as follows:

- (1) ~~[Any state or county law enforcement officer; or]~~ A violation in which the value of the agricultural commodity exceeds \$100 shall be a class C felony; and
- (2) ~~[Any officer or employee of the department of agriculture, or any other person, authorized and designated by the board of agriculture to investigate and enforce this chapter and all rules adopted by the department pursuant thereto.]~~ A violation in which the value of the agricultural commodity is \$100 or less shall be a misdemeanor."

SECTION 5. Section 145-27, Hawaii Revised Statutes, is amended to read as follows:

"[H§145-27] Authorization to seize and hold commodities; disposition. (a) ~~[In addition to the issuance of a citation and summons, upon]~~ Upon reasonable belief that ~~[the]~~ a person is in unlawful possession of agricultural commodities a law enforcement officer or other officer or employee ~~[as described in section 145-25]~~ shall be authorized to hold the agricultural commodity for not longer than forty-eight hours to investigate and ascertain the ownership of the agricultural commodity. If the lawful owner is determined and located, the agricultural, aquacultural, or horticultural commodity shall be released to the lawful owner.

(b) If for any reason the agricultural commodity is not released to the lawful owner after being in the custody of the law enforcement officer or other officer or employee ~~[as described in section 145-25]~~ for forty-eight hours, or less in the case of highly perishable commodities, the commodity may be sold at fair market value to any retailer, wholesaler, or packer of the commodity. All of the proceeds derived from the sale shall be held by the law enforcement officer or other officer or employee ~~[as described in section 145-25]~~ for not longer than six months, during which time the lawful owner of the commodity may submit satisfactory proof of ownership and obtain possession of the proceeds. The owner may be held responsible for any costs and expenses that may be incurred by the law enforcement officer or other officer or employee ~~[as described in section 145-25]~~. Any proceeds of sale not recovered within six months for lack of a claim or for insufficient proof shall be treated as unclaimed property of the State.

(c) Any commodity that remains unsold after being offered for sale pursuant to this section may be donated to a nonprofit charitable organization or destroyed at the discretion of the law enforcement officer or other officer or employee ~~[as described in section 145-25]~~.

(d) For the purposes of this section, "officer or employee" means any officer or employee of the department of agriculture or any other person authorized and designated by the board of agriculture to investigate and enforce this chapter and all rules adopted by the department pursuant thereto."

SECTION 6. Section 708-831, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of theft in the second degree if the person commits theft:

- (a) Of property from the person of another;
- (b) Of property or services the value of which exceeds \$300;
- (c) Of an aquacultural product or part thereof from premises that ~~[is]~~ are fenced or enclosed in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: "Private Property" ~~[; or]~~, "No Trespassing", or a substantially similar message;

- (d) Of agricultural equipment, supplies, or products, or part thereof, the value of which exceeds \$100 but does not exceed \$20,000, or of agricultural products that exceed twenty-five pounds, from premises that are fenced, enclosed, or secured in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: “Private Property”[-], “No Trespassing”, or a substantially similar message; or if at the point of entry of the premise, a crop is visible. The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land in a manner and in such position as to be clearly noticeable from outside the boundary line. Possession of agricultural products without ownership and movement certificates, when a certificate is required pursuant to chapter 145, is prima facie evidence that the products are or have been stolen[-]; or
- (e) Of agricultural commodities that are generally known to be marketed for commercial purposes. Possession of agricultural commodities without ownership and movement certificates, when a certificate is required pursuant to section 145-22, is prima facie evidence that the products are or have been stolen; provided that “agriculture commodities” has the same meaning as in section 145-21.”

SECTION 7. Section 145-26, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 145-28, Hawaii Revised Statutes, is repealed.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval.

(Approved June 15, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 126

H.B. NO. 2296

A Bill for an Act Relating to Animal Welfare.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 159-3, Hawaii Revised Statutes, is amended by amending the definition of “exotic animal” to read as follows:

““Exotic animal” means any cloven-hoofed ruminant animal considered feral in nature, other than domestic cattle, sheep, goats, or equines. For the purposes of this chapter, bears and domestic rabbits shall be considered exotic animals.”

SECTION 2. Section 159-34, Hawaii Revised Statutes, is amended to read as follows:

“[§159-34] Prohibitions. (a) The preparation, sale, offering for sale, or transportation or receipt for transportation in intrastate commerce of meat and meat products derived from exotic animals, unless inspected and passed as provided for under this part, is prohibited. Violators shall be subject to all requirements and penalties of this chapter.

(b) Notwithstanding any other law to the contrary, no person shall buy, sell, transport, deliver, offer for sale or transportation, or receive for transportation in commerce, any bear gallbladders or bile, or any product, item, or substance containing, labeled, or advertised as containing bear gallbladders or bile. The possession of any bear gallbladders or bile, or any product, item, or substance containing, labeled, or advertised as containing bear gallbladders or bile is prima facie evidence of a violation of this subsection. The exemptions set forth in section 159-29 shall not apply to violations of this subsection.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 15, 2012.)

ACT 127

H.B. NO. 1942

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the full implementation of the department of agriculture's electronic importer manifest program is important. The electronic importer manifest program provides for the transfer from an importer to the plant quarantine inspector of data on all commodities of interest imported by aircraft or ship arrival. This electronic manifest system is a requirement for the department of agriculture's transitional facilities program, as the data is used by the inspector to determine the port and inspection status of each commodity, thus allowing for the movement of the selected commodities through the port.

The State's integrated technology consultant found excessive backlogs in agriculture inspections due to the State's lack of implementation of integrated technologies, as reported in the *Honolulu Star Advertiser* on September 30, 2011. The electronic importer manifest system electronically links the importer's commodities manifest to the plant quarantine branch's invicta database system.

Funding the implementation of the electronic importer manifest program will:

- (1) Aid in compliance with the state manifest law, section 150A-5, Hawaii Revised Statutes;
- (2) Enable inspector data for the plant quarantine inspectors to continue to be automated;

- (3) Enable better flow through the ports and reduce harbor and airport cargo congestion;
- (4) Promote compliance with the State's biosecurity law, by allowing performance of produce inspections in food safe areas;
- (5) Increase the available data on imported commodities; and
- (6) Enable the provision of data to measure food self-sufficiency and sustainability.

The purpose of this Act is to authorize the department of agriculture to expend funds to fully implement the electronic importer manifest program in the State and enable the department of agriculture to reimburse private companies that developed the program in 2011 and 2012.

SECTION 2. Section 150A-4.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The moneys in the pest inspection, quarantine, and eradication fund shall be expended by the department for the operation of biosecurity and pest inspection, quarantine, eradication, and monitoring programs[;]; the electronic importer manifest program; related facilities[;]; the execution of emergency remedial measures when pests are detected in the course of inspection and quarantine activities by the department[;]; training of inspectors[;]; education of the agricultural industry, permit and certificate holders, and the general public as to import requirements[;]; and for any other purposes deemed necessary to carry out the purposes of this chapter. In addition, the moneys shall be expended to facilitate the processing and issuance of permits and microorganism import documents and for the operations, activities, and monitoring of permitted and certified plants, animals, and microorganisms.”

SECTION 3. There is appropriated out of the pest inspection, quarantine, and eradication fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2012-2013 to implement the electronic importer manifest program.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved June 15, 2012.)

ACT 128

H.B. NO. 1943

A Bill for an Act Relating to Invasive Species.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the brown tree snake is an invasive species that can damage the balance of the State's ecosystem; threaten native forest vertebrate species; precipitate power outages affecting private, commercial, and military activities; cause widespread loss of domestic birds and pets; and cause considerable emotional trauma to residents and visitors alike when invading human habitats. The brown tree snake was responsible for devastating the majority of the native bird population in Guam. Due to the availability of

prey and lack of predators in introduced habitats such as Guam, brown tree snakes have been known to grow to sizes larger than their normal one to two meters (3.3 to 6.6 feet) in length.

The legislature has supported and provided for the biosecurity program under the department of agriculture since 2008, because it recognizes the impact of invasive species to Hawaii's agriculture, environment, natural resources, public health, and economy. To improve the effectiveness of the program, the legislature recommends reinstatement of the detector-dog program. The detector-dog program provides an important resource to improve interdiction of invasive species into Hawaii. The dogs excel in the detection of flora, snakes, aquatic animals, and in public relations. In airport baggage claim areas, the presence of detector-dogs alone assists in deterring smuggling of commodities through the passenger terminal area.

Previously, the detector-dog program was funded by federal funds, and thus limited to brown tree snake interdiction. The use of state funds will allow the department of agriculture to use these dogs in other invasive species prevention related activities. In addition to the brown tree snake inspections, detector-dogs will be used to inspect incoming airline baggage and incoming small-package air cargo shipments.

The purpose of this Act is to provide funding for detector-dog inspector positions within the department of agriculture.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$162,540 or so much thereof as may be necessary for fiscal year 2012-2013 to match the grant provided by the federal Office of Insular Affairs to fund the plant quarantine detector-dog program, including one inspector/detector-dog trainer and three inspectors/dog handlers.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 3. The department of agriculture shall submit a report on the status of its progress in implementing the detector-dog program funded by this Act to the legislature no later than twenty days prior to the convening of the 2013 regular session.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved June 15, 2012.)

ACT 129

H.B. NO. 2100

A Bill for an Act Relating to Bees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The University of Hawaii at Hilo has been offering an introductory course on beekeeping for more than twenty years. The course provides students with hands-on experience with honey bee hives at the university's one hundred ten-acre farm located in Panaewa, Hawaii. The university also offers an advanced beekeeping course that allows students to build upon their acquired skills with independent projects that include research and creative activities.

Ongoing research at the Panaewa farm has been directed at developing more efficient methods for controlling the small hive beetle, which has become a major pest of honey bee hives on the island of Hawaii. There has reportedly

been significant hive loss attributed to the small hive beetle. Loss of bee hives is a threat to the agricultural economy on all islands because bees are necessary to pollinate many crops. Accordingly, there is a need for the University of Hawaii system to further research bee hives statewide.

The purpose of this Act is to appropriate funds to the University of Hawaii system for bee hive research statewide; provided that in expending the appropriated funds, the University of Hawaii system shall consult with the department of agriculture.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$30,000 or so much thereof as may be necessary for fiscal year 2012-2013 for statewide bee hive research conducted through the University of Hawaii system, including the purchase of hives and related equipment. The appropriated moneys shall be allocated as follows:

- (1) \$5,000 for Hawaii county;
- (2) \$5,000 for Maui county;
- (3) \$5,000 for the city and county of Honolulu;
- (4) \$5,000 for Kauai county; and
- (5) \$10,000 to the University of Hawaii at Hilo, College of Agriculture, Forestry, and Natural Resource Management.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act; provided that the University of Hawaii shall consult with the department of agriculture in the expenditure of the appropriation.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved June 18, 2012.)

ACT 130

S.B. NO. 2115

A Bill for an Act Relating to Charter Schools.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that the charter school governance, accountability, and authority task force ("task force") was established pursuant to section 7 of Act 130, Session Laws of Hawaii 2011 in response to questions and concerns raised by policy makers and advocates alike about the integrity of Hawaii's charter school governance structure and the overall strength of Hawaii's laws in establishing clear lines of authority that ensured accountability of the charter school system.

Specifically, the goal of the task force was to provide clarity to the relationships, responsibilities, and lines of accountability and authority among stakeholders of Hawaii's charter school system, including the board of education, department of education, charter school administrative office, charter school review panel, and local school boards.

In conducting its work, the task force looked at various sections of the charter school model law put forth by the National Alliance for Public Charter Schools and used the model law as a guide in compiling its recommendations to the legislature.

The task force was also fortunate to have the assistance and input of the National Association of Charter School Authorizers and the National Governors Association.

After in-depth examination and discussion, the task force concluded its work and issued its report and recommendations to the legislature.

The purpose of this Act is to adopt the recommendations of the task force by repealing chapter 302B, Hawaii Revised Statutes, and establishing a new charter school law that creates a solid governance structure for Hawaii's charter school system with clear lines of authority and accountability that will foster improved student outcomes.

The legislature finds that this Act will support new approaches to education that accommodate the individual needs of students and provide the State with successful templates that can dramatically improve Hawaii's educational standards for the twenty-first century. This Act will create genuine opportunities for communities to implement innovative models of community-based education.

PART II

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER PUBLIC CHARTER SCHOOLS

§ -1 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Authorizer" means an entity established under this chapter with chartering authority to review charter applications, decide whether to approve or reject charter applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to authorize, reauthorize, or reject charter contracts. The term may include the commission when appropriate.

"Board" means the board of education.

"Charter" means a charter application as approved by an authorizer.

"Charter application" means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status.

"Charter contract" means a fixed-term, bilateral, renewable contract between a public charter school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

"Charter school" or "public charter school" refers to those public schools and their respective governing boards, as defined in this section, that are holding charters to operate as charter schools under this chapter, including start-up and conversion charter schools, and that have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management.

"Commission" means the state public charter school commission established pursuant to § -3 as a statewide authorizer.

"Conversion charter school" means:

- (1) Any existing department school that converts to a charter school and is managed and operated in accordance with section § -14;

- (2) Any existing department school that converts to a charter school and is managed and operated by a nonprofit organization in accordance with section -14; or
- (3) A newly created school consisting of programs or sections of existing public school populations that are funded and governed independently and may include part of a separate Hawaiian language immersion program using existing public school facilities.

"Department" means the department of education.

"Executive director" means the executive director of the state public charter school commission.

"Governing board" means the independent board of a public charter school that is party to the charter contract with the authorizer that:

- (1) Is responsible for the financial, organizational, and academic viability of the charter school and implementation of the charter;
- (2) Possesses the independent authority to determine the organization and management of the school, the curriculum, and virtual education;
- (3) Has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of their employees and is considered the employer of charter school employees for purposes of chapters 76, 78, and 89; and
- (4) Ensures compliance with applicable state and federal laws.

"Nonprofit organization" means a private, nonprofit, tax-exempt entity that:

- (1) Is recognized as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code; and
- (2) Is domiciled in this State.

"Organizational viability" means that a charter school:

- (1) Has been duly constituted and operates in accordance with its charter;
- (2) Has a governing board established in accordance with law and the charter school's charter;
- (3) Employs sufficient faculty and staff to provide the necessary educational program and support services to operate the facility in accordance with its charter;
- (4) Maintains accurate and comprehensive records regarding students and employees as determined by its authorizer;
- (5) Meets appropriate standards of student achievement as defined by the board pursuant to its duties under article X, section 3, of the Constitution of the State of Hawaii;
- (6) Cooperates with board and authorizer requirements in conducting its functions;
- (7) Complies with applicable federal, state, and county laws and requirements;
- (8) In accordance with authorizer guidelines and procedures, is financially sound and fiscally responsible in its use of public funds, maintains accurate and comprehensive financial records, operates in accordance with generally accepted accounting practices, and maintains a sound financial plan;
- (9) Operates within the scope of its charter and fulfills obligations and commitments of its charter;
- (10) Complies with all health and safety laws and requirements;
- (11) Complies with all authorizer directives, policies, and procedures; and

- (12) Complies with all board policies deemed applicable to charter schools by the board.

"Start-up charter school" means a new school established under section -13.

§ -2 Existing charter schools. Any charter school holding a charter to operate under part IV, subpart D, of chapter 302A, as that subpart existed before July 11, 2006, and any charter school holding a charter to operate under chapter 302B as it existed before the enactment of this chapter, shall be considered a charter school for the purposes of this chapter under a charter contract with the commission unless the charter contract is revoked, transferred to another authorizer, or not renewed, or the charter school voluntarily closes.

§ -3 State public charter school commission; establishment; appointment. (a) There is established the state public charter school commission with statewide chartering jurisdiction and authority. The commission shall be placed within the department for administrative purposes only. Notwithstanding section -25 and any law to the contrary, the commission shall be subject to chapter 92.

(b) The mission of the commission shall be to authorize high-quality public charter schools throughout the State.

(c) The commission shall consist of nine members to be appointed by the board. The board shall appoint members who will be tasked with authorizing public charter schools that serve the unique and diverse needs of public school students. The chair of the commission shall be designated by the members of the commission for each school year beginning July 1, and whenever there is a vacancy. The board shall consider the combination of abilities, breadth of experiences, and characteristics of the commission, including but not limited to reflecting the diversity of the student population, geographical representation, and a broad representation of education-related stakeholders.

(d) Understanding that the role of the commission is to ensure a long-term strategic vision for Hawaii's public charter schools, each nominee to the commission shall meet the following minimum qualifications:

- (1) Commitment to education. Each nominee's record should demonstrate a deep and abiding interest in education, and a dedication to the social, academic, and character development of young people through the administration of a high performing charter school system;
- (2) Record of integrity, civic virtue, and high ethical standards. Each nominee shall demonstrate integrity, civic virtue, and high ethical standards and be willing to hold fellow commission members to the same;
- (3) Availability for constructive engagement. Each nominee shall commit to being a conscientious and attentive commission member; and
- (4) Knowledge of best practices. Each nominee shall have an understanding of best practices in charter school educational governance or shall be willing to be trained in such.

(e) Each nominee to the commission shall ideally meet the following recommended qualifications:

- (1) Experience governing complex organizations. Each nominee should possess experience with complex organizations, including but not limited to performance contract management, and a proven ability to function productively within them; and

- (2) Collaborative leadership ability. Each nominee should have substantial leadership experience that ideally illustrates the nominee's ability to function among diverse colleagues as an effective team member, with the ability to articulate, understand, and help shape consensus surrounding commission policies.

(f) Five members of the commission shall constitute a quorum to conduct business and a concurrence of at least five members shall be necessary to make any action of the commission valid.

(g) Commission members shall serve not more than three consecutive three-year terms, with each term beginning on July 1; provided that the initial terms that commence after June 30, 2012, shall be staggered as follows:

- (1) Three members, including the chairperson, to serve three-year terms;
- (2) Three members to serve two-year terms; and
- (3) Three members to serve one-year terms.

(h) Notwithstanding the terms of the members, the board may fill vacancies in the commission at any time when a vacancy occurs due to resignation, non-participation, the request of a majority of the commission members, or termination by the board for cause.

(i) Commission members shall receive no compensation. When commission duties require that a commission member take leave of the member's duties as a state employee, the appropriate state department shall allow the commission member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to fulfill that member's departmental duties. Members shall be reimbursed for necessary travel expenses incurred in the conduct of official commission business.

(j) The commission shall establish operating procedures that shall include conflict of interest procedures for any member whose school of employment or governing board is before the commission.

(k) The commission shall operate with dedicated resources and staff qualified to execute the day-to-day responsibilities of the commission pursuant to this chapter.

§ -4 Chartering authority application for eligible entities. (a) The commission created under section -3 may authorize public charter schools anywhere in the State.

(b) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities may apply to the board, pursuant to this section, for statewide, regional, or local chartering authority, in accordance with each institution's regular operating jurisdiction.

(c) A county or state agency may apply to the board, pursuant to this section, for chartering authority.

(d) Governing boards of non-profit or charitable organizations, which are exempt from federal taxes under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, may apply to the board, and may be granted statewide chartering authority. Nonpublic sectarian or religious organizations and any other charitable organization which in their federal Internal Revenue Service Form 1023, Part IV, describe activities indicating a religious purpose, are not eligible to apply to become an authorizer under this chapter.

(e) The board shall establish, through administrative rules, the annual application and approval process for all entities eligible to apply for chartering authority pursuant to this section; provided that the board shall not approve any application for chartering authority until July 1, 2014, or until the board adopts

rules, whichever is later. By June 30 of each year, the board shall make available information and guidelines for all eligible entities concerning the opportunity to apply for chartering authority under this chapter. The application process shall require each interested eligible entity to submit an application that clearly explains or presents the following elements:

- (1) Written notification of intent to serve as an authorizer in accordance with this chapter;
- (2) The applicant entity's strategic vision for chartering;
- (3) A plan to support the vision presented, including explanation and evidence of the applicant entity's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing, in accordance with this chapter;
- (4) A draft or preliminary outline of the request for proposals that the applicant entity, if approved as an authorizer, would issue to solicit public charter school applicants;
- (5) A draft of the performance framework that the applicant entity, if approved as an authorizer, would use to guide the establishment of a charter contract and for ongoing oversight and evaluation of public charter schools, consistent with the requirements of this chapter;
- (6) A draft of the applicant entity's renewal, revocation, and nonrenewal processes, consistent with section -18;
- (7) A statement of assurance that the applicant entity seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of this chapter, and that if approved as an authorizer, the entity will fully participate in any authorizer training provided or required by the State; and
- (8) A statement of assurance that the applicant will ensure public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures.

(f) By June 30 of each year, the board shall decide whether to grant or deny chartering authority to each applicant. The board shall make its decisions on the merits of each applicant's proposal and plans.

(g) Within sixty days of the board's decision, the board shall execute a renewable authorizing contract with each entity it has approved for chartering authority. The initial term of each authorizing contract shall be six years. The authorizing contract shall specify each approved entity's agreement to serve as an authorizer in accordance with the expectations of this chapter, and shall specify additional performance terms based on the applicant's proposal and plan for chartering. No approved entity shall commence charter authorizing without an authorizing contract in effect.

(h) This section shall not apply to the commission.

§ -5 Authorizer powers, duties, and liabilities. (a) Authorizers are responsible for executing the following essential powers and duties:

- (1) Soliciting and evaluating charter applications;
- (2) Approving quality charter applications that meet identified educational needs and promote a diversity of educational choices;
- (3) Declining to approve weak or inadequate charter applications;
- (4) Negotiating and executing sound charter contracts with each approved public charter school;
- (5) Monitoring, in accordance with charter contract terms, the performance and legal compliance of public charter schools; and
- (6) Determining whether each charter contract merits renewal, nonrenewal, or revocation.

- (b) An authorizer shall:
- (1) Act as the point of contact between the department and a public charter school it authorizes and be responsible for the administration of all applicable state and federal laws;
- (2) Be responsible for and ensure compliance of a charter school it authorizes with all applicable state and federal laws, including reporting requirements;
- (3) Be responsible for the receipt of applicable federal funds from the department and the distribution of funds to the public charter school it authorizes; and
- (4) Be responsible for the receipt of per-pupil funding from the department of budget and finance and distribution of the funding to the public charter school it authorizes.
- (c) An authorizer may delegate its duties to officers, employees, and contractors.
- (d) Regulation by authorizers shall be limited to the powers and duties set forth in this section, and shall be consistent with the spirit and intent of this chapter.
- (e) An authorizer, members of the board of an authorizer acting in their official capacity, and employees or agents of an authorizer are immune from civil and criminal liability with respect to all activities related to a public charter school authorized by that authorizer, except for any acts or omissions constituting willful misconduct.
- (f) An authorizer shall not provide technical support to a charter school it authorizes in cases where the technical support will directly and substantially impact any authorizer decision related to the authorization, renewal, revocation, or nonrenewal of the charter school. This subsection shall not apply to technical support that an authorizer is required to provide to a charter school pursuant to federal law.

§ -6 Principles and standards for charter authorizing. All authorizers shall be required to develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing responsibility including:

- (1) Organizational capacity and infrastructure;
- (2) Soliciting and evaluating charter applications;
- (3) Performance contracting;
- (4) Ongoing public charter school oversight and evaluation; and
- (5) Charter and charter contract renewal decision-making.

Authorizers shall carry out all their duties under this chapter in a manner consistent with nationally recognized principles and standards and with the spirit and intent of this chapter. Evidence of material or persistent failure to do so shall constitute grounds for losing charter authorizing powers.

§ -7 Authorizer reporting. Every authorizer shall be required to submit to the board and the legislature an annual report summarizing:

- (1) The authorizer's strategic vision for chartering and progress toward achieving that vision;
- (2) The academic and financial performance of all operating public charter schools overseen by the authorizer, according to the performance expectations for public charter schools set forth in this chapter;
- (3) The status of the authorizer's public charter school portfolio, identifying all public charter schools in each of the following categories:

ries: approved (but not yet open), not approved, operating, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened;

- (4) The authorizing functions provided by the authorizer to the public charter schools under its purview, including the authorizer's operating costs and expenses detailed in annual audited financial statements that conform with generally accepted accounting principles;
- (5) The services purchased from the authorizer by the public charter schools under its purview;
- (6) A line-item breakdown of the federal funds received by the department and distributed by the authorizer to public charter schools under its control; and
- (7) Any concerns regarding equity and recommendations to improve access to and distribution of federal funds to public charter schools.

§ -8 Conflict of interests. No employee, trustee, agent, or representative of an authorizer may simultaneously serve as an employee, trustee, agent, representative, vendor, or contractor of a public charter school authorized by that authorizer.

§ -9 Exclusivity of authorizing functions and rights. No governmental or other entity, other than those expressly granted chartering authority as set forth in this chapter, may assume any charter authorizing function or duty in any form, unless expressly allowed by law.

§ -10 Services purchased from authorizer; itemized accounting. (a) No public charter school shall be required to purchase services from its authorizer as a condition of charter approval or renewal or of executing a charter contract, nor may any such condition be implied.

(b) A public charter school may, at its discretion, choose to purchase services from its authorizer. In such event, the public charter school and authorizer shall execute an annual service contract, separate from the charter contract, stating the parties' mutual agreement concerning any services to be provided by the authorizer and any service fees to be charged to the public charter school. An authorizer may not charge more than market rates for services provided to a public charter school.

§ -11 Oversight of public charter school authorizers. (a) The board shall be responsible for overseeing the performance and effectiveness of all authorizers established under this chapter.

(b) In accordance with section -7, every authorizer shall submit to the board and the legislature an annual report. The board shall communicate to every authorizer the requirements for the format, content, and submission of the annual report.

(c) Persistently unsatisfactory performance of an authorizer's portfolio of public charter schools, a pattern of well-founded complaints about the authorizer or its public charter schools, or other objective circumstances may trigger a special review by the board. In reviewing or evaluating the performance of authorizers the board shall apply nationally recognized principles and standards for quality charter authorizing. If at any time the board finds that an authorizer is not in compliance with an existing charter contract, its authorizing contract with the board, or the requirements of all authorizers under this chapter, the board shall notify the authorizer in writing of the identified problems, and

the authorizer shall have reasonable opportunity to respond to and remedy the problems.

(d) If an authorizer persists, after due notice from the board, in violating a material provision of a charter contract or its authorizing contract with the board, or fails to remedy other identified authorizing problems, the board shall notify the authorizer, within a reasonable amount of time under the circumstances, that it intends to revoke the authorizer's chartering authority unless the authorizer demonstrates a timely and satisfactory remedy for the violation or deficiencies.

(e) In the event of revocation of any authorizer's chartering authority, the board shall manage the timely and orderly transfer of each charter contract held by that authorizer to another authorizer in the State, with the mutual agreement of each affected public charter school and proposed new authorizer. The new authorizer shall enter into a new charter contract with the charter school for the remainder of the charter term.

§ -12 Charter school governing boards; powers and duties. (a) No more than thirty per cent of the members of a governing board shall be employees of a school or relatives of employees of a school under the jurisdiction of that governing board; provided that the chief executive officer, chief administrative officer, executive director, or otherwise designated head of a charter school may serve as an ex officio, non-voting member of the governing board. In selecting members, consideration shall be given to persons who:

- (1) Provide the governing board with a diversity of perspective and a level of objectivity that accurately represent the interests of the charter school students and the surrounding community;
- (2) Demonstrate an understanding of best practices of non-profit governance; and
- (3) Possess strong financial and academic management and oversight abilities, as well as human resource and fundraising experience.

(b) No employee of a charter school or relative of an employee of a charter school may serve as the chair of the governing board of that charter school; provided that an authorizer may grant an exemption from the provisions of this subsection based upon a determination by the authorizer that an exemption is in the best interest of the charter school.

(c) The governing board shall be the independent governing body of its charter school and shall have oversight over and be responsible for the financial, organizational, and academic viability of the charter school, implementation of the charter, and the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws. The governing board shall ensure its school complies with the terms of the charter contract between the authorizer and the school. The governing board shall have the power to negotiate supplemental collective bargaining agreements with the exclusive representatives of their employees.

(d) Governing boards shall be exempt from chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. Governing boards and charter schools are encouraged to use the provisions of chapter 103D wherever possible; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the charter school to any other provision of chapter 103D.

(e) Charter schools and their governing boards shall be exempt from the requirements of chapters 91 and 92. The governing boards shall:

- (1) Make available the notices and agendas of public meetings:
 - (A) At a publicly accessible area in the governing board's office and the authorizer's office so as to be available for review during regular business hours; and
 - (B) On the governing board's or charter school's internet website, if applicable, and the authorizer's internet website not less than six calendar days prior to the public meeting, unless a waiver is granted by the authorizer or authorizer's designee in the case of an emergency; and
- (2) Make available the minutes from public meetings within thirty days and maintain a list of the current names and contact information of the governing board's members and officers:
 - (A) In the governing board's office and the authorizer's office so as to be available for review during regular business hours; and
 - (B) On the governing board's or charter school's internet website, if applicable, and the authorizer's internet website.

(f) All charter school employees and members of governing boards shall be subject to chapter 84.

(g) The State shall afford the governing board of any charter school the same protections as the State affords the board.

(h) For purposes of this section, "employees" shall include the chief executive officer, chief administrative officer, executive director, or otherwise designated head of a charter school.

§ -13 Start-up charter schools; establishment. (a) New start-up charter schools may be established pursuant to this section.

(b) Any community, group of teachers, group of teachers and administrators, or nonprofit organization may submit a letter of intent to an authorizer to form a charter school, establish a governing board as its governing body, and develop a charter application pursuant to subsection (d).

(c) The start-up charter school charter application process and schedule shall be determined by the authorizer, and shall provide for and include the following elements:

- (1) The submission of a letter of intent to operate a start-up charter school;
- (2) The timely transmittal of the charter application form and completion guidelines to the governing board;
- (3) The timely submission of a completed charter application to the authorizer;
- (4) The timely review of the charter application by the authorizer for completeness, and notification by the authorizer to the governing board that the charter application is complete;
- (5) Upon receipt of a completed charter application, the convening of the commission, if applicable, by the commission chairperson to begin review of the charter application;
- (6) Following the submission of a charter application, issuance of a charter or denial of the charter application by the authorizer or if submitted to the commission, by majority vote;
- (7) A provision for a final date by which a decision must be made, upon receipt of a complete charter application; and

- (8) A provision that no start-up charter school may begin operation before obtaining authorizer approval of its charter application and charter contract.

(d) A charter application to become a start-up charter school shall meet the requirements of this subsection and section -25. The charter application shall include the following:

- (1) A description of employee rights and management issues and a framework for addressing those issues that protects the rights of employees;
- (2) A plan for identifying, recruiting, and retaining highly qualified instructional faculty;
- (3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;
- (4) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
- (5) A plan for the assessment of student, administrative support, and teaching personnel performance that:
 - (A) Recognizes the interests of the general public;
 - (B) Incorporates or exceeds the educational content and performance standards developed by the department for the public school system;
 - (C) Includes a system of faculty and staff accountability that holds faculty and staff individually and collectively accountable for their performance, and that is at least equivalent to the average system of accountability in public schools throughout the State; and
 - (D) Provides for program audits and annual financial audits;
- (6) A governance structure for the charter school that incorporates a conflict of interest policy and a plan for periodic training to carry out the duties of governing board members;
- (7) A description of the constitution of the governing board, terms of governing board members, and the process by which governing board members were selected;
- (8) A financial plan based on the most recent fiscal year's per-pupil charter school allocation that demonstrates the ability to meet the financial obligations of one-time, start-up costs and ongoing costs such as monthly payrolls, faculty recruitment, professional development, and facilities costs; and
- (9) A facilities plan.

(e) Any applicant whose charter application is denied by the authorizer shall not be allowed to amend or resubmit the charter application to the authorizer during a given cycle, as defined by the authorizer; provided that an applicant shall have the right to appeal the authorizer's denial of its charter application pursuant to section -15.

(f) In reviewing a charter application under this section, an authorizer shall take into consideration the constitution of the applicant's governing board, terms of governing board members, and the process by which governing board members were selected.

(g) In reviewing charter applications under this section, an authorizer shall develop a schedule to approve or deny a charter application by the end of the calendar year for purposes of meeting any deadlines to request funding from the legislature.

§ -14 Conversion charter schools; establishment. (a) A conversion charter school may be established pursuant to this section.

(b) Any department school, school community council, group of teachers, group of teachers and administrators, or nonprofit organization may submit a letter of intent to an authorizer to convert a department school to a charter school, establish a governing board as its governing body, and develop a charter application pursuant to subsection (d).

(c) The conversion charter school charter application process and schedule shall be determined by the authorizer, and shall provide for and include the following elements:

- (1) The submission of a letter of intent to convert to a charter school;
- (2) The timely transmittal of the charter application form and completion guidelines to the governing board;
- (3) The timely submission of a completed charter application to the authorizer; provided that the charter application shall include certification and documentation that the charter application was approved by a majority of the votes cast by existing administrative, support, teaching personnel, and parents of students at the existing department school; provided that:
 - (A) This vote shall be considered by the authorizer to be the primary indication of the existing administrative, support, and teaching personnel, and parents' approval to convert to a charter school;
 - (B) The balance of stakeholders represented in the vote and the broad support received in support of the conversion shall be a key factor in an authorizer's decision to award a charter; and
 - (C) A breakdown of the number of administrative, support, and teacher personnel, and parents that actually participated in the vote shall be provided to the authorizer;
- (4) The timely review of the charter application by the authorizer for completeness, and notification by the authorizer to the governing board that the charter application is complete;
- (5) Upon receipt of a completed charter application, the convening of the commission, if applicable, by the commission chairperson to begin review of the charter application;
- (6) Following the submission of a charter application, issuance of a charter or denial of the charter application by the authorizer or if submitted to the commission, by majority vote;
- (7) A provision for a final date by which a decision must be made upon receipt of a complete charter application; and
- (8) A provision that no conversion charter school may begin operation before obtaining authorizer approval of its charter and charter contract.

(d) A charter application to become a conversion charter school shall meet the requirements of this subsection and section -25. The charter application shall include the following:

- (1) A description of employee rights and management issues and a framework for addressing those issues that protects the rights of employees;
- (2) A plan for identifying, recruiting, and retaining highly qualified instructional faculty;
- (3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;

- (4) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
- (5) A plan for the assessment of student, administrative support, and teaching personnel performance that:
 - (A) Recognizes the interests of the general public;
 - (B) Incorporates or exceeds the educational content and performance standards developed by the department for the public school system;
 - (C) Includes a system of faculty and staff accountability that holds faculty and staff individually and collectively accountable for their performance, and that is at least equivalent to the average system of accountability in public schools throughout the State; and
 - (D) Provides for program audits and annual financial audits;
- (6) A governance structure for the charter school that incorporates a conflict of interest policy and a plan for periodic training to carry out the duties of governing board members;
- (7) A description of the constitution of the governing board, terms of governing board members, and the process by which governing board members were selected;
- (8) A financial plan based on the most recent fiscal year's per-pupil charter school allocation that demonstrates the ability to meet the financial obligations of one-time, start-up costs and ongoing costs such as monthly payrolls, faculty recruitment, professional development, and facilities costs; and
- (9) A facilities plan.
- (e) A nonprofit organization may submit a letter of intent to an authorizer to convert a department school to a conversion charter school, operate and manage the school, establish a governing board as its governing body, and develop a charter application pursuant to subsection (d); provided that:
 - (1) As the governing body of the conversion charter school, the governing board shall be the board of directors of the nonprofit organization and shall not be selected pursuant to section -12. The nonprofit organization may also appoint advisory groups of community representatives for each school managed by the nonprofit organization; provided that these groups shall not have governing authority over the school and shall serve only in an advisory capacity to the nonprofit organization;
 - (2) The charter application for each conversion charter school to be operated by the nonprofit organization shall be formulated, developed, and submitted by the nonprofit organization, and shall be approved by a majority of the votes cast by existing administrative, support, and teaching personnel, and parents of the students of the existing department school; provided that:
 - (A) This vote shall be considered by the authorizer to be the primary indication of the existing administrative, support, and teaching personnel, and parents' approval to convert to a charter school;
 - (B) The balance of stakeholders represented in the vote and the broad support received in support of the conversion shall be a key factor in an authorizer's decision to award a charter; and
 - (C) A breakdown of the number of administrative, support, and teacher personnel, and parents that actually participated in the vote shall be provided to the authorizer;

- (3) The board of directors of the nonprofit organization, as the governing body for the conversion charter school that it operates and manages, shall have the same protections that are afforded to the board in its role as the conversion charter school governing body;
- (4) Any conversion charter school that is managed and operated by a nonprofit organization shall be eligible for the same federal and state funding as other public schools; provided that the nonprofit organization makes a minimum annual contribution of \$1 per pupil toward the operation of a conversion charter school for every \$4 per pupil allocated by the department of budget and finance for the operation of the conversion charter school; provided further that in no event shall the nonprofit organization be required to contribute more than the total required contribution per pupil per year. As used in this paragraph, "total required contribution" means:
 - (A) \$1,650 for school years 2012-2013 through 2015-2016; and
 - (B) \$1,815 for school years 2016-2017 through 2020-2021; and
- (5) If, at any time, the board of directors of the nonprofit organization governing the conversion charter school votes to discontinue its relationship with the charter school, the charter school may submit a revised charter application to the authorizer to continue as a conversion school without the participation of the nonprofit organization.
- (f) Any nonprofit organization that seeks to manage or operate a conversion charter school as provided in subsection (e) shall comply with the following at the time of charter application:
 - (1) Have bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of potential conflict of interest situations;
 - (2) Have experience in the management and operation of public or private schools or, to the extent necessary, agree to obtain appropriate services from another entity or entities possessing such experience;
 - (3) Comply with all applicable federal, state, and county laws, including licensure or accreditation, as applicable; and
 - (4) Comply with any other requirements prescribed by the department to ensure adherence with applicable federal, state, and county laws, and the purposes of this chapter.
- (g) Any public school or schools, programs, or sections of existing public school populations that are part of a separate Hawaiian language immersion program using existing public school facilities may submit a letter of intent to an authorizer to form a conversion charter school pursuant to this section.
- (h) In reviewing a charter application for a charter under this section, an authorizer shall take into consideration the constitution of the applicant's governing board, terms of governing board members, and the process by which governing board members were selected.
- (i) In the event of a conflict between the provisions in this section and other provisions in this chapter, this section shall control.
- (j) Any applicant whose charter application is denied by the authorizer shall not be allowed to amend or resubmit the charter application to the authorizer during a given cycle, as defined by the authorizer, except as provided in subsection (e)(5); provided that an applicant shall have the right to appeal the authorizer's denial of its charter application pursuant to section -15.
- (k) In reviewing charter applications for a charter under this section, an authorizer shall develop a schedule to approve or deny a charter application by

the end of the calendar year for purposes of meeting any deadlines to request funding from the legislature.

§ -15 Appeals; charter applications, reauthorizations, or revocations. The board shall have the power to decide appeals of decisions by an authorizer to deny the approval of a charter application, deny reauthorization of a charter school, or revoke a charter school's charter. An appeal shall be filed with the board within twenty-one calendar days of the receipt of the notification of denial or revocation. Only a party whose charter application has been denied, whose reauthorization has been denied, or whose charter has been revoked may initiate an appeal under this section for cause. The board shall review an appeal and issue a final decision within sixty calendar days of the filing of the appeal. The board may adopt applicable rules and procedures pursuant to chapter 91 for implementing the appeals process.

§ -16 Performance framework. (a) The performance provisions within the charter contract shall be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures, and metrics that will guide the authorizer's evaluations of each public charter school. The performance framework, as established by the authorizer, shall include indicators, measures, and metrics for, at a minimum:

- (1) Student academic proficiency;
- (2) Student academic growth;
- (3) Achievement gaps in proficiency and growth between major student subgroups;
- (4) Attendance;
- (5) Recurrent enrollment from year to year;
- (6) Postsecondary readiness, as applicable for high schools;
- (7) Financial performance and sustainability;
- (8) Performance and stewardship, including compliance with all applicable laws, rules, and terms of the charter contract; and
- (9) Organizational viability.

(b) Annual performance targets shall be set by each public charter school in conjunction with its authorizer, and shall be designed to help each school meet applicable federal, state, and authorizer expectations.

(c) The performance framework shall allow the inclusion of additional rigorous, valid, and reliable indicators proposed by a public charter school to augment external evaluations of its performance; provided that the authorizer approves the quality and rigor of such school-proposed indicators, and the indicators are consistent with the purposes of this chapter and the charter contract.

(d) The performance framework shall require the disaggregation of all student performance data by major student subgroups, including gender, race, poverty status, special education status, English as a second language status, and gifted and talented status.

(e) For each public charter school it oversees, the authorizer shall be responsible for managing all data from assessments in accordance with the performance framework.

(f) Multiple schools operating under a single charter contract or overseen by a single governing board shall be required to report their performance as separate, individual charter schools, and each charter school shall be held independently accountable for its performance.

§ -17 Ongoing oversight and corrective actions. (a) An authorizer shall continually monitor the performance and legal compliance of the public charter

schools it oversees, including collecting and analyzing data to support ongoing evaluation according to the charter contract. Every authorizer shall have the authority to conduct or require oversight activities that enable the authorizer to fulfill its responsibilities under this chapter, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this chapter and adhere to the terms of the charter contract.

(b) Each authorizer shall annually publish and provide, as part of its annual report to the board and the legislature, a performance report for each public charter school it oversees, in accordance with the performance framework set forth in the charter contract and section -16. The authorizer shall require each public charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school. The annual report shall include the status of the charter school's compliance with annual performance targets, as determined by the charter contract.

(c) In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify the public charter school of the perceived problem and provide reasonable opportunity for the charter school to remedy the problem, unless the problem warrants revocation in which case the revocation timeframes set forth in section -18 shall apply.

(d) Notwithstanding section -18 to the contrary, every authorizer shall have the authority to take appropriate corrective actions or exercise sanctions short of revocation in response to apparent deficiencies in public charter school performance or legal compliance. Such actions or sanctions may include, if warranted, requiring a school to develop and execute a corrective action plan within a specified timeframe.

(e) If there is an immediate concern for student or employee health or safety at a charter school, the authorizer may adopt an interim restructuring plan that may include the appointment of an interim governing board, a governing board chairperson, or a principal to temporarily assume operations of the school; provided that if possible without further jeopardizing the health or safety of students and employees, the charter school's stakeholders and community are first given the opportunity to elect a new governing board which shall appoint a new interim principal.

The board shall have the authority to direct the authorizer to take appropriate action to immediately address serious health and safety issues that may exist at a charter school in order to ensure the health and safety of students and employees and mitigate significant liability to the State.

§ -18 Renewals, revocations, and nonrenewals. (a) A charter contract may be renewed for successive five-year terms of duration, although an authorizer may vary the terms based on performance, demonstrated capacities, and particular circumstances of each charter school. An authorizer may grant a renewal of a charter contract with specific conditions for necessary improvements to a charter school.

(b) No later than September 1, the authorizer shall issue a charter school performance report and charter contract renewal application guidance to any charter school whose charter contract will expire the following year. The performance report shall summarize the charter school's performance record to date, based on the data required by this chapter and the charter contract, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the charter school that may jeopardize its position in seeking renewal if not timely rectified. The charter school shall have thirty days to respond to the performance report and submit any corrections or clarifications for the report.

(c) The renewal application guidance shall, at a minimum, provide an opportunity for the public charter school to:

- (1) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;
- (2) Describe improvements undertaken or planned for the school; and
- (3) Detail the charter school's plans for the next charter term.

(d) The renewal application guidance shall include or refer explicitly to the criteria that will guide the authorizer's renewal decisions, which shall be based on the charter contract and be consistent with this chapter.

(e) No later than March 1, the governing board of a charter school seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal guidance issued by the authorizer. The authorizer shall decide whether or not to renew the charter no later than forty-five days after the filing of the renewal application.

(f) In making charter renewal decisions, every authorizer shall:

- (1) Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;
- (2) Ensure that data used in making the renewal decisions are available to the charter school and the public; and
- (3) Provide a public report summarizing the evidence and basis for each decision.

(g) A charter contract may be revoked at any time or not renewed if the authorizer determines that the charter school did any of the following or otherwise failed to comply with the provisions of this chapter:

- (1) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;
 - (2) Failed to meet or make sufficient progress toward performance expectations set forth in the contract;
 - (3) Failed to meet generally accepted standards of fiscal management; or
 - (4) Substantially violated any material provision of law from which the charter school is not exempted.
- (h) An authorizer shall develop revocation and non-renewal processes

that:

- (1) Provide the charter holders with a timely notification of the prospect of revocation or non-renewal and the reasons for such possible closure;
- (2) Allow the charter holders a reasonable amount of time in which to prepare a response;
- (3) Provide the charter holders with an opportunity to submit documents and give testimony challenging the rationale for closure and supporting the continuation of the school at an orderly proceeding held for that purpose;
- (4) Allow charter holders access to representation by counsel, subject to section 28-8.3, and to call witnesses on their behalf;
- (5) Permit the recording of proceedings described in paragraph (3); and
- (6) After a reasonable period for deliberation, require a final determination to be made and conveyed in writing to the charter holders.

(i) If an authorizer revokes or does not renew a charter, the authorizer shall clearly state in writing the reasons for the revocation or nonrenewal.

(j) Within fifteen days of taking action to renew, not renew, or revoke a charter, the authorizer shall report to the board the action taken, and shall simultaneously provide a copy of the report to the charter school. The report shall set forth the action taken and reasons for the decision and assurances as to compliance with all the requirements set forth in this chapter.

§ -19 School closure and dissolution. (a) Prior to any public charter school closure decision, an authorizer shall have developed a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets in accordance with the requirements of this chapter. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the school and the authorizer. In the event of a public charter school closure for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.

(b) In the event of a public charter school closure for any reason, the assets of the school, excluding facilities, shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to creditors of the school, and then to the state treasury to the credit of the general fund. If the assets of the school are insufficient to pay all parties to whom the school owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

(c) In the event of a public charter school closure for any reason, if the public charter school received an appropriation for capital improvements to its facilities, the charter school or its authorizer shall negotiate with the expending agency for a lump sum or installment repayment to the State of the amounts appropriated. This restriction shall be registered, recorded, and indexed in the bureau of conveyances or with the assistant registrar of the land court as an encumbrance on the property. Amounts received from the repayment under this subsection shall be deposited into the general fund.

(d) In the event of a public charter school closure for any reason, other public charter schools shall have the right of first refusal for the closed public charter school's facilities, if the facilities are owned by the State. If no other public charter school exercises the right of first refusal, the facilities shall revert back to the department and the State.

§ -20 Charter transfers. (a) Transfer of a charter contract, and of oversight of that public charter school, from one authorizer to another before the expiration of the charter term shall not be permitted except by special petition to the board by a public charter school or its authorizer. The board shall review such petitions on a case-by-case basis and may grant transfer requests in response to special circumstances and evidence that such a transfer would serve the best interests of the public charter school's students.

(b) The board may adopt rules pursuant to chapter 91 to carry out the purposes of this section.

§ -21 Annual board report. No later than twenty days prior to the convening of each regular session of the legislature, the board shall issue to the governor, the legislature, and the public, an annual report on the State's public charter schools, drawing from the annual reports submitted by every authorizer as well as any additional relevant data compiled by the board, for the school year ending in the preceding calendar year. The annual report shall include:

- (1) A comparison of the performance of public charter school students with the performance of academically, ethnically, geographically, and economically comparable groups of students in public schools governed by chapter 302A;
- (2) The board's assessment of the successes, challenges, and areas for improvement in meeting the purposes of this chapter, including the board's assessment of the sufficiency of funding for public charter schools, and any suggested changes in state law or policy necessary to strengthen the State's public charter schools;
- (3) A line-item breakdown of all federal funds received by the department and distributed to authorizers;
- (4) Any concerns regarding equity and recommendations to improve access to and distribution of federal funds to public charter schools; and
- (5) A discussion of all board policies adopted in the previous year, including a detailed explanation as to whether each policy is or is not applicable to charter schools.

§ -22 Board as final arbitrator. (a) The board shall serve as the final arbitrator of those appeals listed in section -15.

(b) A party shall not be entitled to a hearing before the board under this section until it has exhausted all available administrative remedies.

(c) The board shall adopt applicable rules and procedures pursuant to chapter 91 for implementing this section.

§ -23 Minimum educational data reporting standards. The board shall establish educational reporting standards that shall include minimum standards for reporting fiscal, personnel, and student data, by means of electronic transfer of data files from charter schools to the department. The minimum standards established by the board shall include but not be limited to data required for the department, as the state education agency, to meet all applicable federal reporting requirements.

§ -24 Occupancy and use of facilities of public schools. (a) When the department considers whether to close any particular public school, the department shall submit a notice of possible availability of a public school or notice of vacancy of a public school to the board pursuant to section 302A-1151.5(b); provided that the department has not elected to use the public school to support education programs.

(b) If a charter school exclusively or jointly occupies or uses buildings or facilities of a public school immediately prior to converting to a charter school, upon conversion that charter school shall be given continued exclusive or joint use of the buildings or facilities; provided that:

- (1) The State may reclaim some or all of the buildings or facilities if it demonstrates a tangible and imperative need for such reclamation; and
- (2) The State and the conversion charter school voluntarily enter into an agreement detailing the portion of those buildings or facilities that shall be reclaimed by the State and a timetable for the reclamation. If a timetable cannot be reached, the State may petition the board for the reclamation, and the board may grant the petition only to the extent that it is not possible for the conversion charter school and the State to jointly occupy or use the buildings or facilities.

(c) Upon receipt of a notice pursuant to section 302A-1151.5(b), the board shall solicit applications from charter schools interested in using and occupying all or portions of the facilities of the public school by:

- (1) Promptly notifying all charter schools that the public school is being considered for closure; and
- (2) Affording each charter school an opportunity to submit an application with a written explanation and justification of why the charter school should be considered for possible occupancy and use of the facilities of the public school.

(d) After fully considering each charter school's application and based on the applications received and on other considerations, the board shall:

- (1) Provide a written response to each charter school's application after each application has been fully considered;
- (2) Compile a prioritized list of charter schools; and
- (3) Make a final determination of which charter school, if any, shall be authorized to use and occupy the public school facilities.

(e) Upon the selection of a charter school to use a vacant school facility or portion of a school facility, the department and the charter school's authorizer shall enter into necessary agreements within ninety days of the selection to carry out the purposes of this section; provided that any agreement between the authorizer and the department shall stipulate that a charter school that uses and occupies a public school facility or portion of a public school facility shall be responsible for the full or pro rata share of the repair and maintenance costs for that facility or portion of the facility, as the case may be.

(f) The board shall adopt policies and procedures necessary to carry out the purposes of this section, including but not limited to:

- (1) Procedures for charter schools to apply in writing to use vacant school facilities;
- (2) Criteria for the board to use in determining which charter schools to include on the prioritized list to be submitted to the department; and
- (3) Procedures for the board to notify charter school applicants that are granted or denied the use of vacant school facilities.

(g) For purposes of this section, "public school" means any school that falls within the definition of public schools in section 302A-101, except for charter schools.

§ -25 Applicability of state laws. (a) Charter schools shall be exempt from chapters 91 and 92 and all other state laws in conflict with this chapter, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:
 - (A) The exclusive representatives as defined in chapter 89 and the governing board of the charter school may enter into supplemental agreements that contain cost and noncost items to facilitate decentralized decision-making;
 - (B) The agreements shall be funded from the current allocation or other sources of revenue received by the charter school; provided that collective bargaining increases for employees shall be allocated by the department of budget and finance to the charter school's authorizer for distribution to the charter school; and
 - (C) These supplemental agreements may differ from the master contracts negotiated with the department;
- (2) Discriminatory practices under section 378-2; and

(3) Health and safety requirements.

(b) Charter schools, the commission, and authorizers shall be exempt from chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. Charter schools, the commission, and authorizers are encouraged to use the provisions of chapter 103D where possible; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the charter school, commission, or authorizer to any other provision of chapter 103D. Charter schools, the commission, and authorizers shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public.

(c) Charter schools and their employees, the commission and its employees, and governing boards and their members shall be subject to chapter 84.

(d) Any charter school, prior to the beginning of the school year, may enter into an annual contract with any department for centralized services to be provided by that department.

(e) Notwithstanding any law to the contrary, as public schools and entities of the State, a charter school, including its governing board, the commission, and any authorizer may not bring suit against any other entity or agency of the State.

§ -26 Civil service status; employee rights. (a) Civil service employees of department schools shall retain their civil service status upon the conversion of their school to a conversion charter school. Positions in a conversion charter school that would be civil service in a department public school shall be civil service positions and subject to chapter 76. An employee with civil service status at a conversion charter school who transfers, is promoted, or takes a voluntary demotion to another civil service position shall be entitled to all of the rights, privileges, and benefits of continuous, uninterrupted civil service. Civil service employees of a conversion charter school shall have civil service status in the department's civil service system and shall be entitled to all rights, privileges, and benefits as other civil service employees employed by the department. Exempt employees as provided in section 76-16(b)(11)(B) of a conversion charter school shall have support services personnel status in the department's support services personnel system and shall be entitled to all rights, privileges, and benefits as other exempt employees employed by the department in their support services personnel system.

(b) The State shall afford administrative, support, and instructional employees in charter schools full participation in the State's systems for retirement, workers' compensation, unemployment insurance, temporary disability insurance, and health benefits in accordance with the qualification requirements for each.

(c) The department, to the extent possible, shall provide its position listings to authorizers and any interested governing board of any charter school.

(d) The department, in conjunction with authorizers, shall facilitate the movement of instructional personnel between the department and charter schools; provided that:

(1) Comparable and verifiable professional development and employee evaluation standards and practices, as determined and certified by the authorizers, are in place in charter schools for instructional staff;

- (2) Licensed charter school teachers, as determined by the Hawaii teacher standards board, who are not yet tenured in the department and are entering or returning to the department after full-time employment of no less than one full school year at a charter school, shall be subject to no more than one year of probationary status; and
- (3) Tenured department licensed teachers, as determined by the department, who transfer to charter schools shall not be required to serve a probationary period.
- (e) The department shall establish a process that permits employees of department public schools that become conversion charter schools pursuant to section -14 to transfer to a department public school governed by chapter 302A.

§ -27 Administration of workers' compensation. The department of human resources development shall administer workers' compensation claims for employees of charter schools, who shall be covered by the same self-insured workers' compensation system as other public employees. The department of human resources development shall process, investigate, and make payments on claims; provided that:

- (1) Charter schools shall compile the preliminary claim form and forward it to the department of human resources development; and
- (2) The department of human resources development shall receive no more than 0.07 per cent of the EDN 600 appropriation to process these workers' compensation claims.

§ -28 Funding and finance. (a) Beginning with fiscal year 2012-2013, and each fiscal year thereafter, the non-facility general fund per-pupil funding request for charter school students shall be the same as the general fund per-pupil amount to the department in the most recently approved executive budget recommendation for the department and shall be based upon reasonable projected enrollment figures for all charter schools. The general fund per-pupil request for each regular education and special education student shall:

- (1) Include all general fund regular education cost categories, including comprehensive school support services, but excluding special education services, adult education, and the after-school plus program; provided that these services are provided and funded by the department; and
- (2) Exclude fringe benefit costs and debt service.
- (b) Fringe benefit costs for charter school employees, regardless of the payroll system utilized by a charter school, shall be included in the department of budget and finance's annual budget request. No fringe benefit costs shall be charged directly to or deducted from the charter school per-pupil allocations.

The legislature shall make an appropriation based upon the budget request; provided that the legislature may make additional appropriations for facility and other costs.

The governor, pursuant to chapter 37, may impose restrictions or reductions on charter school appropriations similar to those imposed on other public schools.

- (c) Notwithstanding any law to the contrary, to ensure non-facility per-pupil general fund amounts allocated for the department and charter school students are equal on an annualized fiscal year basis, each year the director of finance shall:

- (1) Determine the sum of general fund appropriations made for department and charter school student non-facility costs described in subsections (a) and (b);
- (2) Determine the sum of department and charter school student enrollment based on reviewed and verified student enrollment counts as of October 15;
- (3) Determine a per-pupil amount by dividing the sum of general fund appropriations determined under paragraph (1) by the sum of student enrollment determined under paragraph (2);
- (4) Transfer a general fund amount between the department and charter schools that will provide each with a per-pupil allocation equal to the amount determined on an annualized fiscal year basis under paragraph (3); and
- (5) Annually account for all calculations and transfers made pursuant to this subsection in a report to the legislature, governor, department, and charter schools.

This subsection shall not limit the ability of the director of finance to modify or amend any allotment pursuant to chapter 37.

(d) Charter schools shall be eligible for all federal financial support to the same extent as all other public schools. The department shall provide all authorizers with all state-level federal grant proposals submitted by the department that include charter schools as potential recipients and timely reports on state-level federal grants received for which charter schools may apply or are entitled to receive. Federal funds received by the department for charter schools shall be transferred to authorizers for distribution to the charter schools they authorize in accordance with the federal requirements. If administrative services related to federal grants and subsidies are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six per cent of the charter school's federal grants and subsidies.

Any charter school shall be eligible to receive any supplemental federal grant or award for which any other public school may submit a proposal, or any supplemental federal grants limited to charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to these supplemental grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six per cent of the supplemental grant for which the services are used.

All additional funds generated by the governing boards, that are not from a supplemental grant, shall be held separate from allotted funds and may be expended at the discretion of the governing boards.

(e) Authorizers shall calculate a general fund per-pupil amount based upon the amount of general funds appropriated by the legislature and released by the governor and the projected enrollment amount used to calculate the general funds appropriated pursuant to subsection (a).

Authorizers shall submit a report to the legislature no later than twenty days prior to the convening of each regular session that contains each charter school's current school year projection that is used to submit the budget request, the updated May 15 enrollment projection, the actual October 15 enrollment count, the authorizer's reviewed and verified enrollment count, and the November 15 enrollment count.

(f) To enable charter schools to access state funding prior to the start of each school year, foster their fiscal planning, enhance their accountability,

and avoid over-allocating general funds to charter schools based on self-reported enrollment projections, authorizers shall:

- (1) Provide sixty per cent of a charter school's per-pupil allocation based on the charter school's projected student enrollment no later than July 20 of each fiscal year; provided that the charter school shall have submitted to its authorizer a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional thirty per cent of a charter school's per-pupil allocation no later than December 1 of each year, based on the October 15 student enrollment, as reviewed and verified by the authorizer, only to schools in compliance with all financial reporting requirements; and
- (3) Retain no more than the balance of the remaining ten per cent of a charter school's per-pupil allocation, as a contingency balance to ensure fiscal accountability and compliance, no later than June 30 of each year;

provided that the board may make adjustments in allocations based on non-compliance with board policies made in the board's capacity as the state education agency, department directives made in the department's capacity as the state education agency, the board's administrative procedures, and board-approved accountability requirements.

(g) The department shall provide appropriate transitional resources to a conversion charter school for its first year of operation as a charter school based upon the department's allocation to the school for the year prior to the conversion.

(h) No charter school may assess tuition.

§ -29 Weighted student formula. (a) Notwithstanding section -28, charter schools shall elect whether to receive allocations calculated according to the department's procedures and methodology used to calculate the weighted student formula allocation adopted pursuant to section 302A-1303.6; provided that:

- (1) All charter schools, as a group, with each governing board being accorded one vote, shall elect, by greater than two-thirds agreement among the governing boards, whether to receive allocations calculated through the department's procedures and methodology for the weighted student formula; provided that a nonprofit organization that governs more than one conversion charter school may cast one vote representing each school it governs; and
- (2) Any election by charter schools to receive allocations, or not to receive allocations, calculated through the procedures and methodology for the department's weighted student formula shall be made by September 1 of each even-numbered year, and the election shall apply to the fiscal biennium beginning July 1 of the following year.

(b) The charter schools, through their authorizer, may propose to the board an alternative weighted student formula, approved by more than two-thirds of the governing boards, with each governing board being accorded one vote, to be administered by the commission and to apply to the per-pupil allocation for charter schools.

§ -30 Responsibilities of the department; special education services. (a) The department shall collaborate with each authorizer to develop a system of technical assistance related to compliance with federal and state laws and access to federal and state funds. The department shall collaborate with each authoriz-

er to develop a list of central services that the department may offer for purchase by a charter school at an annual cost to be negotiated between an individual charter school and the department. The department shall enter into a contract with a charter school to provide these services, which shall be renegotiated on an annual basis.

(b) The department shall be responsible for the provision of a free appropriate public education. Any charter school that enrolls special education students or identifies one of its students as eligible for special education shall be responsible for providing the educational and related services required by a student's individualized education program. The programs and services for the student shall be determined collaboratively by the student's individualized education program team, which includes the student's parents or legal guardians.

If the charter school is unable to provide all of the required services, then the department shall provide the student with services as determined by the student's individualized educational program team. The department shall collaborate with the commission to develop guidelines related to the provision of special education services and resources to each charter school. The department shall review all of the current individualized education programs of special education students enrolled in a charter school and may offer staff, funding, or both, to the charter school based upon a per-pupil weighted formula implemented by the department and used to allocate resources for special education students in the public schools.

§ -31 Sports. The department shall provide students at charter schools with the same opportunity to participate in athletics as is provided to students at other public schools. If a student at a charter school wishes to participate in a sport for which there is no program at the charter school, the department shall allow that student to participate in a comparable program of any public school in the complex in which the charter school is located."

SECTION 3. (a) There is established a charter school administrative office, hereinafter referred to as the office, which shall be attached to the department of education for administrative purposes only. The office shall be administered by an executive director, who shall be appointed without regard to chapters 76 and 89, Hawaii Revised Statutes, by the state public charter school commission based upon the recommendations of an organization of charter schools operating within the State or from a list of nominees submitted by the charter schools. The state public charter school commission shall hire the executive director, who may be contracted for a term of up to one year; shall offer the executive director a written contract; and may terminate the executive director's contract only for cause; provided that the executive director's contract shall automatically terminate upon the repeal of this section. The executive director, with the approval of the state public charter school commission, may hire necessary staff without regard to chapters 76 and 89, Hawaii Revised Statutes, to assist in the administration of the office.

(b) The executive director, under the direction of the state public charter school commission, and in consultation with the charter schools, shall be responsible for the internal organization, operation, and management of the charter school system, including:

- (1) Preparing and executing the budget and the capital improvement projects request for the charter schools, including submission of the all means of finance budget request that reflects all anticipated expenditures to the state public charter school commission, the board of education, the governor, and the legislature; provided that, in

preparing the budget request with regard to needs-based facilities funding, the executive director shall ensure that, as a budget item separate from other operating costs, the request is accompanied by a detailed explanation of the formula used and a funding request breakdown by school;

- (2) Allocating annual appropriations to the charter schools and distribution of federal funds to charter schools;
- (3) Complying with applicable state laws related to the administration of the charter schools;
- (4) Preparing contracts between the charter schools and the department of education for centralized services to be provided by the department of education;
- (5) Preparing contracts between the charter schools and other state agencies for financial or personnel services to be provided by the agencies to the charter schools;
- (6) Providing independent analyses and recommendations on charter school issues;
- (7) Representing charter schools and the charter school system in communications with the board of education, the governor, and the legislature;
- (8) Providing advocacy, assistance, and support for the development, growth, progress, and success of charter schools and the charter school system;
- (9) Providing guidance and assistance to charter applicants and charter schools to enhance the completeness and accuracy of information for state public charter school commission review;
- (10) Assisting charter applicants and charter schools in coordinating their interactions with the state public charter school commission, as needed;
- (11) Assisting the state public charter school commission to coordinate with charter schools in state public charter school commission investigations and evaluations of charter schools;
- (12) Serving as the conduit to disseminate communications from the state public charter school commission, the board of education, and the department of education to all charter schools;
- (13) Determining charter school system needs and communicating those needs to the state public charter school commission, the board of education, and the department of education;
- (14) Establishing a dispute resolution and mediation process; and
- (15) Upon request by one or more charter schools, assisting in the negotiation of a collective bargaining agreement with the exclusive representative of its employees.

(c) The executive director shall be evaluated annually by the state public charter school commission. The annual evaluation shall be conducted sufficiently in advance of the end of a term to provide the executive director the opportunity to respond to concerns and improve performance.

(d) The office shall withhold funds for its operational expenses, including the salaries of the executive director and staff, from the annual charter school general fund appropriation. The total amount of operational expenses withheld:

- (1) Shall not exceed two per cent of the annual charter school general fund allocation, which shall not include any funds carried over from previous years;

- (2) Shall not include the amount of funds withheld under subsections (g) and (h); and
- (3) Shall be determined annually by the state public charter school commission.

The salaries of the executive director and staff shall be set by the state public charter school commission in accordance with the requirements of this subsection and chapter 89C, Hawaii Revised Statutes.

(e) The office shall report annually to the state public charter school commission individual and aggregate expenditures of charter schools, clearly distinguishing between expenditures for operational purposes and for instructional purposes. The office shall adopt rules to develop a standardized method for charter schools to report the expenditures and to determine expenditures that constitute expenditures for operational expenses and expenditures for instructional purposes. If any charter school fails to meet the reporting requirements under this subsection, the office may retain a portion of that charter school's per-pupil allocation pursuant to section -28, Hawaii Revised Statutes.

(f) The office shall include in its annual budget request additional funds to cover the estimated costs of:

- (1) Vacation and sick leave accrued by employees transferring to a charter school from another state agency or department;
- (2) Substitute teachers needed when a teacher is out on vacation or sick leave;
- (3) Adjustments to enrollments; and
- (4) Arbitration in the grievance process.

(g) The office shall withhold funds for charter school enrollments that are inconsistent with approved charter contracts entered into pursuant to chapter , Hawaii Revised Statutes.

(h) The office shall withhold funds to repay overpayments or over-allocations received by charter schools when not repaid in a timely manner in accordance with rules adopted by the board of education.

(i) The office may carry over funds from previous year allocations. Funds distributed to charter schools shall be considered expended.

(j) The office shall serve as the designated staff of the state public charter school commission.

PART III

SECTION 4. Section 26-35.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For purposes of this section, "member" means any person who is appointed, in accordance with the law, to serve on a temporary or permanent state board, including members of the board of education, the ~~[local school]~~ governing board of any charter school established under chapter [302B,] ____, council, authority, committee, or commission, established by law or elected to the board of trustees of the employees' retirement system under section 88-24, or the corporation board of the Hawaii health systems corporation under section 323F-3 and its regional system boards under section 323F-3.5; provided that "member" shall not include any person elected to serve on a board or commission in accordance with chapter 11."

SECTION 5. Section 89-6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

- (1) Elected or appointed official;
- (2) Member of any board or commission; provided that nothing in this paragraph shall prohibit a member of a collective bargaining unit from serving on a ~~[local school]~~ governing board of a charter school, on the state public charter school commission, or ~~[the]~~ as a charter school [review panel] authorizer established under chapter ~~[302B;]~~ ____;
- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
- (4) Secretary to top-level managerial and administrative personnel under paragraph (3);
- (5) Individual concerned with confidential matters affecting employee-employer relations;
- (6) Part-time employee working less than twenty hours per week, except part-time employees included in unit (5);
- (7) Temporary employee of three months' duration or less;
- (8) Employee of the executive office of the governor or a household employee at Washington Place;
- (9) Employee of the executive office of the lieutenant governor;
- (10) Employee of the executive office of the mayor;
- (11) Staff of the legislative branch of the State;
- (12) Staff of the legislative branches of the counties, except employees of the clerks' offices of the counties;
- (13) Any commissioned and enlisted personnel of the Hawaii national guard;
- (14) Inmate, kokua, patient, ward, or student of a state institution;
- (15) Student help;
- (16) Staff of the Hawaii labor relations board;
- (17) Employees of the Hawaii national guard youth challenge academy; or
- (18) Employees of the office of elections."

SECTION 6. Section 89-10.55, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) For the purpose of negotiating a memorandum of agreement or a supplemental agreement that only applies to employees of a charter school, the employer shall mean the ~~[local school]~~ governing board, subject to the conditions and requirements contained in the applicable sections of this chapter governing any memorandum of agreement or supplemental agreement.

(d) Negotiations over matters covered by this section shall be conducted between the employer and exclusive representative pursuant to this chapter. Cost items that are appropriated for and approved by the legislature and contained in a collective bargaining agreement, memorandum of agreement, or supplemental agreement covering, wholly or partially, employees in charter schools shall be allocated by the department of budget and finance to ~~[the]~~ a charter school [administrative office] authorizer for distribution to ~~the charter [schools.] schools~~ it authorizes. However, if the charter school ~~[administrative office] authorizer~~ deems it appropriate, the cost items may be funded from a charter school's existing allocation or other sources of revenue received by a charter school."

SECTION 7. Section 302A-101, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

““Authorizer” has the same meaning as in section -1.
“Commission” has the same meaning as in section -1.”

2. By deleting the definitions of “charter school administrative office” or “office” and “charter school review panel” or “panel”.

[~~““Charter school administrative office” or “office” means the office established in section 302B-8 responsible for the internal organization, operation, and management of the charter school system.~~

~~“Charter school review panel” or “panel” means the panel established in section 302B-3.”]~~

SECTION 8. Section 302A-1101, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The board shall appoint the state public charter school [review panel] commission which shall serve as the statewide charter authorizer for charter schools, with the power and duty to issue charters, oversee and monitor charter schools, hold charter schools accountable for their performance, and revoke charters.”

SECTION 9. Section 302A-1151, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1151 Sale of school lands unnecessary for school purposes. The chairperson of the board of land and natural resources is hereby requested, upon the recommendation and approval of the superintendent, to sell any state lands, including the buildings thereon, once used but no longer necessary for school purposes; provided that no school facility or portion of a school facility shall be sold before that facility or portion of the facility is made available for use by the department or charter schools, pursuant to sections 302A-1151.5 and [302B-3-6.] -24.”

SECTION 10. Section 302A-1151.5, Hawaii Revised Statutes, is amended by amending subsections (b) to (e) to read as follows:

“(b) The department shall submit a notice of possible availability of a public school to the ~~[charter school review panel]~~ board as early as possible; provided that if a vacancy is established, a notice of vacancy shall be submitted to the ~~[charter school review panel]~~ board no later than thirty days after the establishment of the vacancy.

(c) Pursuant to section ~~[302B-3-6]~~ -24 and upon receipt of a notice pursuant to subsection (b), the ~~[charter school review panel]~~ board shall solicit applications from charter schools interested in using and occupying all or portions of the facilities of the public school and submit a prioritized list of charter schools to the department for final determination of which charter school, if any, shall be authorized to use and occupy the public school facilities.

(d) Upon the selection of a charter school to use a vacant school facility or portion of a school facility, the department and the ~~[charter school review panel]~~ selected charter school’s governing board shall enter into necessary agreements within ninety days of the selection to carry out the purposes of this section.

(e) After receipt by the ~~[charter school review panel]~~ board of a notice pursuant to subsection (b), if the ~~[charter school review panel]~~ board does not ~~[provide]~~ compile a prioritized list of charter schools because no charter school has requested to use the facilities of the public school, or if the ~~[department re-~~

receives the prioritized list but] board determines that no charter school on the list is an appropriate candidate to occupy and use the facilities, the department shall give reasonable consideration to making all or portions of the facilities of the public school, if closed, available for occupancy and use for other educational purposes.”

SECTION 11. Section 302A-1302, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1302 School-based budget flexibility. (a) Beginning with the 1995-1997 fiscal biennium, the department shall implement school-based budget flexibility for schools, complexes, and learning support centers. The flexibility shall be limited to the school-based budgeting program EDN 100 of the department for all schools except charter schools.

(b) Beginning in fiscal year 2006-2007, ~~[and every year thereafter,]~~ the office shall distribute the allocations due to a charter school directly to the charter school.

(c) Beginning in fiscal year 2012-2013, and every year thereafter, each authorizer, as defined in section -1, shall distribute the allocations due to each charter school it authorizes directly to the charter school.”

SECTION 12. Section 302A-1303.6, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1303.6 Weighted student formula. Based upon recommendations from the committee on weights, the board of education, not less than once every odd-numbered year, shall adopt a weighted student formula for the allocation of moneys to public schools that takes into account the educational needs of each student. The department, upon the receipt of appropriated moneys, shall use the weighted student formula to allocate funds to public schools. Principals shall expend moneys provided to the principals’ schools. This section shall only apply to charter schools for fiscal years in which the charter schools elect pursuant to section ~~[302B-13]~~ -29 to receive allocations according to the weighted student formula.”

SECTION 13. Section 302A-1403, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1403 Authority to secure federal funds. The department, the state public charter school [administrative office,] commission, a charter school authorizer, director of finance, and governor may take such steps and perform such acts as may be necessary or proper to secure any such federal funds for the purposes specified in sections 302A-1401 and 302A-1402.”

SECTION 14. Section 302A-1404, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department and the state public charter school [administrative office,] commission or an authorizer, as appropriate, may retain and expend federal indirect overhead reimbursements for discretionary grants in excess of the negotiated rate for such reimbursements as determined by the director of finance and the superintendent or the director of finance and the ~~[executive director of the]~~ state public charter school [administrative office,] commission or an authorizer, as appropriate.”

SECTION 15. Section 302A-1505, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Prior to informing the department about the school’s repair and maintenance needs, the school’s principal shall consider the recommendations made by the school community council or the ~~[local school]~~ governing board, if the school is a charter school.”

SECTION 16. Chapter 302B, Hawaii Revised Statutes, is repealed.

PART IV

SECTION 17. Notwithstanding any law to the contrary, the members of the charter school review panel serving on the day of the effective date of this Act shall serve on the state public charter school commission until the appointment of no fewer than five members to the state public charter school commission pursuant to section 2 this Act, at which time all members of the charter school review panel shall be discharged from service and the members of the state public charter school commission shall begin their service; provided that any vacancy in the charter school review panel occurring between the effective date of this Act and the discharge from office of all charter school review panel members shall remain vacant until appointed to the state public charter school commission by the board of education pursuant to this Act.

SECTION 18. All rights, powers, functions, and duties of the charter school administrative office as established pursuant to section 302B-8, Hawaii Revised Statutes, are transferred to the charter school administrative office as established pursuant to section 3 of this Act.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 19. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal prop-

erty heretofore made, used, acquired, or held by the charter school administrative office as established pursuant to section 302B-8, Hawaii Revised Statutes, relating to the functions transferred to the charter school administrative office as established pursuant to section 3 of this Act shall be transferred with the functions to which they relate.

SECTION 20. All rules, policies, procedures, guidelines, and other material adopted or developed by the board of education to implement provisions of the Hawaii Revised Statutes that are made applicable to public charter schools prior to the effective date of this Act, shall remain in full force and effect until amended or repealed by the board of education pursuant to chapter 91, Hawaii Revised Statutes.

SECTION 21. As of the effective date of this Act, all moneys in the charter schools account established pursuant to section 302B-12(i), Hawaii Revised Statutes, shall be transferred to the general fund of the State of Hawaii.

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 23. This Act shall take effect upon its approval; provided that section 3 of this Act shall be repealed on July 1, 2013.

(Approved June 19, 2012.)

ACT 131

S.B. NO. 2116

A Bill for an Act Relating to Charter Schools.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the charter school governance, accountability, and authority task force ("task force") was established pursuant to section 7 of Act 130, Session Laws of Hawaii 2011, in response to questions and concerns raised by policy makers and advocates alike about the integrity of Hawaii's charter school governance structure and the overall strength of Hawaii's laws in establishing clear lines of authority that ensured accountability of the charter school system.

Specifically, the goal of the task force was to provide clarity to the relationships, responsibilities, and the lines of accountability and authority among stakeholders of Hawaii's charter school system, including the board of education, department of education, charter school administrative office, charter school review panel, and local school boards.

The task force looked at various sections of the charter school model law put forth by the National Alliance for Public Charter Schools and used the model law as a guide in compiling its recommendations to the legislature.

The task force was also fortunate to have the assistance and input of the National Association of Charter School Authorizers and the National Governors Association.

The task force concluded its work and issued its report and recommendations to the legislature, which are included in Act 130, Session Laws of Hawaii 2012.

The purpose of this Act is to require the board of education to contract for an implementation and transition coordinator to assist in creating a compre-

hensive transition framework to implement the recommendations of the task force, included in Act 130, Session Laws of Hawaii 2012.

SECTION 2. (a) The board of education, in consultation with national organizations such as the National Governors Association, National Association of Charter School Authorizers, and National Alliance for Public Charter Schools, shall contract for an implementation and transition coordinator to assist with:

- (1) Implementation of the recommendations of the charter school governance, accountability, and authority task force pursuant to Act 130, Session Laws of Hawaii 2011; and
- (2) The transition from the current charter school system under chapter 302B, Hawaii Revised Statutes, to the charter school system set forth in Act 130, Session Laws of Hawaii 2012.

(b) The minimum qualifications for an implementation and transition coordinator shall be the following:

- (1) Knowledge and experience in educational governance and accountability, with a strong emphasis on charter schools;
 - (2) Extensive experience in public policy and administration, specifically working with state policy makers and community stakeholders; and
 - (3) Demonstrated strong written and oral communication skills.
- (c) The scope of work developed pursuant to subsection (a), at a minimum, shall require the implementation and transition coordinator to:

- (1) Develop a comprehensive plan for the implementation of the recommendations of the charter school governance, accountability, and authority task force as set forth in Act 130, Session Laws of Hawaii 2012, including the development of a communications plan, a plan for engaging key charter school stakeholders, and development of a strategy for the monitoring and evaluation of the implementation efforts by the board of education;
- (2) Draft any policies and procedures, including administrative rules, necessary for the implementation of Act 130, Session Laws of Hawaii 2012;
- (3) Assist in developing position descriptions for the state public charter school commission staff as detailed in the charter school governance, accountability, and authority task force report to the legislature pursuant to Act 130, Session Laws of Hawaii 2011;
- (4) Determine a plan and develop procedures for the redistribution of the duties of the charter school administrative office to other charter school stakeholders upon the repeal of the charter school administrative office pursuant to Act 130, Session Laws of Hawaii 2012;
- (5) Develop a funding plan to address the transition of current charter school administrative office staff to the state public charter school commission established pursuant to Act 130, Session Laws of Hawaii 2012;
- (6) Assist the board of education with the recruitment and selection of members to the state public charter school commission established pursuant to Act 130, Session Laws of Hawaii 2012;
- (7) Prepare communications and coordinate collaboration between charter schools, governing boards, charter school authorizers, the board of education, the department of education, other state departments, and the legislature in carrying out the scope of work; and

- (8) Assist the department of education in taking an inventory of all full time employee positions within the department that work with charter schools and making a recommendation as to which positions may be repurposed or redirected based upon the statutory changes required by Act 130, Session Laws of Hawaii 2012.

(d) The board of education shall be responsible for awarding and overseeing the contract for the implementation and transition coordinator. The term of the contract shall be for one year; provided that the board of education and the implementation and transition coordinator may enter into supplemental contracts as the board of education may deem necessary to carry out the purposes of this Act.

(e) Chapter 103D, Hawaii Revised Statutes, shall not apply to the contracting of the implementation and transition coordinator pursuant to this Act.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the board of education to contract for an implementation and transition coordinator.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 4. In printing this Act, the revisor of statutes shall insert, in sections 1 and 2 of this Act, the corresponding Act number for S.B. No. 2115,¹ in any form passed by the legislature, Regular Session of 2012.

SECTION 5. This Act shall take effect on July 1, 2012, upon the enactment of S.B. No. 2115¹ in any form passed by the legislature, regular session of 2012.

(Approved June 19, 2012.)

Note

1. Act 130.

ACT 132

S.B. NO. 1382

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In October 2010, the United States Department of Education issued new regulations for programs authorized under Title IV of the Higher Education Act of 1965, as amended, to hold programs accountable for preparing students for gainful employment, protect students from misleading recruiting practices, ensure that only eligible students receive financial aid, and strengthen federal student aid programs at for-profit, non-profit, and public institutions. The regulations also include requirements for state authorization of institutions that offer educational programs beyond secondary education for purposes of federal program eligibility.

The state post-secondary education commission, established under section 304A-3151, Hawaii Revised Statutes, qualifies the State to receive funds made available under the Higher Education Act of 1965, as amended, and may serve as the state agency for the receipt of federal funds when necessary. However, the commission does not authorize institutions to operate educational programs beyond secondary education, as may be required under new federal regulations.

Further, the commission is established under the University of Hawaii for administrative purposes. The legislature finds that either the establishment of a new entity or the placement of the existing post-secondary commission under a different department of state government may result in an entity that is more broadly representative of post-secondary education in the State and more appropriate to serve as the authorizing state agency for the diverse institutions that operate educational programs beyond secondary education.

The State was unable to satisfy all of the requirements relating to state authorization by the July 1, 2011, deadline. However, the United States Department of Education provided the opportunity for states and institutions to receive an extension to July 1, 2013, for certain regulations. In the meantime, it is the intent of the legislature to proactively seek solutions by determining what actions and changes are required for the State to come into compliance with the new regulations. This Act is a good faith attempt to begin to meet the federal requirements of the Higher Education Act of 1965, as amended.

Accordingly, the purpose of this Act is to request the auditor to examine the Higher Education Act of 1965, as amended, and regulations pursuant to that Act, and examine and recommend a possible regulatory framework to ensure the State's compliance with provisions relating to the authorization of institutions that offer educational programs beyond secondary education.

SECTION 2. (a) The auditor shall examine the federal Higher Education Act of 1965, as amended, and federal regulations pursuant to that Act, and recommend the best available options to the State, including a regulatory framework, to ensure the State's compliance with provisions relating to the authorization of institutions that offer educational programs beyond secondary education in the State for the purposes of federal program eligibility.

(b) In conducting the examination and making recommendations pursuant to subsection (a), the auditor shall:

- (1) Examine the feasibility of establishing an entity within an existing department of state government to regulate the authorization, record-keeping, and handling of complaints of and against institutions providing post-secondary education within the State or such institutions based within the State;
- (2) Examine potential governance and organizational structures for the entity described in paragraph (1), including an analysis of whether there is any role for an advisory body;
- (3) Recommend policies and procedures for the entity described in paragraph (1) to handle grievances and complaints against any post-secondary educational institution authorized and registered in the State;
- (4) Identify the types of institutions that will be subject to the regulatory framework recommended in subsection (a), including but not limited to degree and non-degree granting institutions;
- (5) Recommend a framework for an authorization system, as well as a process for exemptions, in order for educational institutions to provide post-secondary education within the State or to be based within the State;
- (6) Examine any potential issues with imposing a fee for post-secondary educational institutions; and
- (7) Examine whether the entity described in paragraph (1) may negotiate and enter into interstate reciprocity agreements with other states that will effectuate the purpose of the entity's responsibilities.

(c) The auditor shall submit a report of the analyses performed pursuant to this Act to the legislature no later than twenty days prior to the convening of the regular session of 2013.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 19, 2012.)

ACT 133

S.B. NO. 2540

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the department of education is the largest department in state government and has numerous statutes that it must adhere to.

The legislature also finds that as a result of the constitutional amendment adopted in the 2010 general election, the board of education was required to transform from an elected board to an appointed board, with the appointments being made by the governor. Pursuant to Act 5, Session Laws of Hawaii 2011, the members of the board of education have been appointed and confirmed and have begun their important work. This change in educational governance provides a unique opportunity to review sections of the Hawaii Revised Statutes to determine if amending or reducing statutory constraints and requirements might assist the board of education and department of education in creating a more effective educational delivery system. These statutory changes will not diminish the role of the legislature in overseeing the department of education and holding it accountable for the educational success of students. Nor should the repeal of outdated and duplicative sections of chapter 302A, Hawaii Revised Statutes, suggest that the department of education did not or does not have the proper legal authority to implement the programs or activities covered by the repealed sections. Rather, this Act places decision making over those certain programs or activities at the best level, whether at the board policy level or the department administrative level.

The purpose of this Act is to add clarity to or resolve conflicting or inconsistent language among different sections of law and to amend or repeal various sections of chapter 302A, Hawaii Revised Statutes, that:

- (1) Have been accomplished and are no longer necessary;
- (2) Impede rather than assist the department of education in meeting its core mission;
- (3) Fall under the purview of the board of education, such as policy, staffing, and programmatic decisions;
- (4) Are mandated by federal law and do not require codification in state law; or
- (5) Are covered by another section of the Hawaii Revised Statutes, administrative rules, or board of education policy.

SECTION 2. Section 4-1, Hawaii Revised Statutes, is amended to read as follows:

"§4-1 Districts, generally. For election, taxation, ~~[education,]~~ city, county, and all other purposes, the State shall be divided into the following dis-

tricts; provided that the establishment of election districts shall be exclusively governed by article IV of the constitution of the State of Hawaii and chapter 25:

- (1) The island and county of Hawaii shall be divided into nine districts as follows:
 - (A) Puna, to be styled the Puna district;
 - (B) From the Hakalau stream to the boundary of South Hilo and Puna, to be styled the South Hilo district;
 - (C) From the boundary of Hamakua and North Hilo to the Hakalau stream, to be styled the North Hilo district;
 - (D) Hamakua, to be styled the Hamakua district;
 - (E) North Kohala, to be styled the North Kohala district;
 - (F) South Kohala, to be styled the South Kohala district;
 - (G) North Kona, to be styled the North Kona district;
 - (H) South Kona, to be styled the South Kona district; and
 - (I) Kau, to be styled the Kau district.
- (2) The islands of Maui, Molokai, Lanai, and Kahoolawe and the counties of Maui and Kalawao shall be divided into seven districts as follows:
 - (A) Kahikinui, Kaupo, Kipahulu, Hana, and Koolau, to be styled the Hana district;
 - (B) Hamakualoa, Hamakuapoko, portion of Kula, and Honu-aula, the western boundary being a line starting from the sea at Kapukaulua on the boundary between the ahupuaas of Haliimaile and Wailuku, thence running inland following the boundary to the mauka side of the Lowrie ditch, thence following the mauka side of the ditch and its projected extension to the Waiakoa gulch which is the boundary between the ahupuaas of Pulehunui and Waiakoa, thence down along the boundary to the mauka boundary of the Waiakoa Homesteads (makai section), thence along the boundary to the ahupuaa of Kaonoulu, thence across the ahupuaa of Kaonoulu to the mauka boundary of the Waiohuli-Keokea Beach Homesteads, thence along the boundary to the mauka boundary of the Kamaole Homesteads, thence along the boundary and the extension thereof to the north boundary of the ahupuaa of Paeahu, thence along the boundary to the sea, and including the island of Kahoolawe, to be styled the Makawao district;
 - (C) All that portion of central Maui lying east of a line along the boundary of the ahupuaas of Kahakulua and Honokohau to the peak of Eke crater, thence along the ridge of mountains and down the bottom of Manawainui gulch to the sea, and west of the boundary of Makawao district, to be styled Wailuku district;
 - (D) All that portion of Maui lying west of Wailuku district, to be styled the Lahaina district;
 - (E) The island of Molokai, except that portion of the island known as Kalaupapa, Kalawao, and Waikolu and commonly known or designated as the Settlement for Hansen's disease sufferers, to be styled the Molokai district;
 - (F) All that portion of the island of Molokai known as Kalaupapa, Kalawao, and Waikolu forming the county of Kalawao, to be styled the Kalawao district; and
 - (G) The island of Lanai, to be styled the Lanai district.

- (3) For judicial purposes, the island of Oahu shall be divided into seven districts as follows:
 - (A) From Makapuu Head in Maunalua to Moanalua inclusive, and the islands not included in any other district, to be styled the Honolulu district;
 - (B) Ewa, excluding Waikakalaua, Waipio Acres, and Mililani Town, to be styled the Ewa district;
 - (C) Waianae excluding Waianae Uka, to be styled the Waianae district;
 - (D) From Kaena point to and including Waiale Stream excluding Wahiawa, hereinafter described, to be styled the Waialua district;
 - (E) From Waiale Stream to Lae o ka Oio, to be styled the Koolauloa district;
 - (F) From Lae o ka Oio to Makapuu Head in Waimanalo, to be styled the Koolaupoko district; and
 - (G) Wahiawa and Waianae Uka, including Waikakalaua, Waipio Acres, and Mililani Town, lying between Ewa and Waialua districts and more particularly described in the following manner: Beginning at Puu Kaaumakua in the Koolau range and running to and along the south boundary of Waianae Uka (which is also the south boundary of Schofield Barracks Military Reservation) to Puu Hapapa in the Waianae range; thence continuing along Schofield Barracks Military Reservation northerly along the Waianae range to Puu Kaala, easterly along Mokuleia down ridge to Puu Pane, continuing to Maili Trig. station, and down ridge to Haleauau stream and down Haleauau stream to Kaukonahua gulch, and easterly along the gulch to the west boundary of the ahupuaa of Wahiawa; thence leaving Schofield Barracks Military Reservation and following up and along the west and north boundaries of the ahupuaa of Wahiawa to the Koolau range; thence along the Koolau range to the beginning; to be styled the Wahiawa district.
- (4) For all purposes except for judicial, the island of Oahu shall be divided into seven districts as follows:
 - (A) From Makapuu Head in Maunalua to Moanalua inclusive, and the islands not included in any other district, to be styled the Honolulu district;
 - (B) Ewa, to be styled the Ewa district;
 - (C) Waianae excluding Waianae Uka, to be styled the Waianae district;
 - (D) From Kaena point to and including the ahupuaa of Waimea excluding Wahiawa, hereinafter described, to be styled the Waialua district;
 - (E) From Waimea to Lae o ka Oio, to be styled the Koolauloa district;
 - (F) From Lae o ka Oio to Makapuu Head in Waimanalo, to be styled the Koolaupoko district; and
 - (G) Wahiawa and Waianae Uka, lying between Ewa and Waialua districts and more particularly described in the following manner: Beginning at Puu Kaaumakua in the Koolau range and running to and along the south boundary of Waianae Uka (which is also the south boundary of Schofield Barracks Military Reservation) to Puu Hapapa in the Waianae range;

thence continuing along Schofield Barracks Military Reservation northerly along the Waianae range to Puu Kaala, easterly along Mokuleia down ridge to Puu Pane, continuing to Maili Trig. station, and down ridge to Haleauau stream and down Haleauau stream to Kaukonahua gulch, and easterly along the gulch to the west boundary of the ahupuaa of Wahiawa; thence leaving Schofield Barracks Military Reservation and following up and along the west and north boundaries of the ahupuaa of Wahiawa to the Koolau range; thence along the Koolau range to the beginning; to be styled the Wahiawa district.

- (5) The islands of Kauai, Niihau, Kaula, and county of Kauai, shall be divided into five districts as follows:
 - (A) From Puanaaiea point to the ili of Eleele, including the islands of Niihau and Kaula, to be styled the Waimea district;
 - (B) From and including the ili of Eleele to and including Mahaulupu, to be styled the Koloa district;
 - (C) From and including Kipu to the northerly bank of the north fork and the main Wailua river, to be styled the Lihue district;
 - (D) From the northerly bank of the north fork and the main Wailua river to Kealaakao, to be styled the Kawaihau district; and
 - (E) From and including Kealaakao to Puanaaiea point to be styled the Hanalei district."

SECTION 3. Section 36-35, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created in the state general fund under EDN 400 (school support) the state educational facilities repair and maintenance account, into which shall be deposited legislative appropriations to the account designated for use solely to eliminate the backlog of school repair and maintenance projects, including the repair or replacement of fixtures, furnishings, and equipment, existing on June 30, 2000. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Based on the prioritization approved by the department of education [as prescribed by section 302A-1505], appropriations or authorizations from the account shall be expended by the superintendent of education."

SECTION 4. Section 36-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created in the state general fund under EDN 400 (school support) the school physical plant operations and maintenance account, into which shall be deposited all legislative appropriations to the account.

The moneys in the account shall be used solely for school repairs and preventive maintenance projects scheduled after June 30, 2001. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Based on the prioritization approved by the department of education [as prescribed by section 302A-1505], appropriations or authorizations from the account shall be expended by the superintendent of education."

SECTION 5. Section 92F-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any other provision in this chapter to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

- (1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;
- (2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases, except to the extent protected by section 92F-13(1);
- (3) Government purchasing information, including all bid results, except to the extent prohibited by section 92F-13;
- (4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;
- (5) Land ownership, transfer, and lien records, including real property tax information and leases of state land;
- (6) Results of environmental tests;
- (7) Minutes of all agency meetings required by law to be public;
- (8) Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan;
- (9) Certified payroll records on public works contracts except social security numbers and home addresses;
- (10) Regarding contract hires and consultants employed by agencies:
 - (A) The contract itself, the amount of compensation;
 - (B) The duration of the contract; and
 - (C) The objectives of the contract, except social security numbers and home addresses;
- (11) Building permit information within the control of the agency;
- (12) Water service consumption data maintained by the boards of water supply;
- (13) Rosters of persons holding licenses or permits granted by an agency that may include name, business address, type of license held, and status of the license;
- (14) The name, compensation (but only the salary range for employees covered by or included in chapter 76, and sections 302A-602 to [302A-640,] 302A-639, and 302A-701, or bargaining unit (8)), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency; provided that this paragraph shall not require the creation of a roster of employees; and provided further that this paragraph shall not apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency;
- (15) Information collected and maintained for the purpose of making information available to the general public; and
- (16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public."

SECTION 6. Section 302A-101, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read:

“Complex” means the high school and those elementary, middle, and intermediate schools that feed into the high school as designated by the department.

“Complex area” means the administrative unit that includes one or more complexes as designated by the department.

“District” means the state public education system as a whole, except as used by the department for federal compliance and reporting requirements.”

2. By amending the definition of “complex area superintendent” to read:

“Complex area superintendent” means the chief administrative officer of a complex area and the [school] complexes therein.”

3. By deleting the definitions of “gifted and talented children”, “job-sharing”, “regional administrative unit”, and “school complex”.

[“Gifted and talented children” means students residing in the State who are of compulsory school age and are enrolled in, and attending, a public school, and whose superior performance or potential indicates exceptional ability or talent. This ability or talent may occur singly in or in combination with any of the following areas: intellectual, creative or specific academic abilities, leadership capabilities, psychomotor abilities, or abilities in the performing or visual arts.

“Job-sharing” means the voluntary sharing of a full-time, permanent employee’s position with another employee, with each employee working one-half of the total number of hours of work required per week and performing one-half of the work required of the respective full-time position, and with each employee receiving one-half of the salary to which each employee is respectively entitled and at least one-half of each employee benefit afforded to full-time employees.

“Regional administrative unit” means a grouping of complexes established by the department for administrative support and organizational purposes.

“School complex” means a grouping of schools established by the department for instructional, administrative, and organizational purposes.”]

SECTION 7. Section 302A-412, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each secondary public school, upon the approval of the principal [and the complex area superintendent], may allow on the premises vending machines operated as a concession; provided that the concession shall be operated only by a blind or visually handicapped person, as defined in sections 235-1, 347-1, and 347-2. The location and operation of the vending machines and the items dispensed shall be approved by the [department.] principal.”

SECTION 8. Section 302A-431, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board and the board of regents of the University of Hawaii may adopt necessary rules under chapter 91 to administer and implement sections [302A-429 to] 302A-430 and 302A-431, including the adoption of safety guidelines and safety inspection procedures of facilities where students are placed. The department and the University of Hawaii shall inspect each facility annually prior to the placement of students with these facilities.”

SECTION 9. Section 302A-461, Hawaii Revised Statutes, is amended to read as follows:

“[§302A-461] Gender equity in athletics. (a) No person, on the basis of sex, shall be excluded from participating in, be denied the benefits of, or be

subjected to discrimination in athletics offered by a public high school, pursuant to Public Law 92-318, Title IX of the federal Education Amendments of 1972.

(b) This section shall apply to public schools as defined in section 302A-101; provided that it shall apply to grades nine to twelve only.

(c) No private right of action at law shall arise under this section."

SECTION 10. Section 302A-603, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided, before the 1997-1998 school year, whoever serves in the department as a teacher without holding an unrevoked certificate issued under sections 302A-602 to ~~[302A-640,]~~ 302A-639, and 302A-701, shall be fined not more than \$25."

SECTION 11. Section 302A-604, Hawaii Revised Statutes, is amended to read as follows:

"§302A-604 Complex area superintendents. The superintendent of education, with the approval of the board, shall appoint complex area superintendents for schools. The complex area superintendents shall supervise the delivery of administrative and instructional support services within their respective complex areas, including:

- (1) Personnel, fiscal, and facilities support;
- (2) Monitoring of compliance with applicable state and federal laws;
~~[and]~~
- (3) Curriculum development, student assessment, and staff development services~~[-]; and~~
- (4) Special education programs and special schools within the complex area."

SECTION 12. Section 302A-626, Hawaii Revised Statutes, is amended to read as follows:

"§302A-626 Salary increases; annual, longevity. (a) Teachers and educational officers who have completed a year's satisfactory service and who have complied with the other requirements of sections 302A-602 to ~~[302A-640,]~~ 302A-639, and 302A-701, shall be entitled to an annual increment.

(b) Teachers and educational officers who have served satisfactorily for three years in their maximum increment step or in any longevity step and who have complied with the other requirements of sections 302A-602 to ~~[302A-640,]~~ 302A-639, and 302A-701, shall receive longevity step increases; provided that the board may grant principals and vice-principals longevity step increases more frequently than once every three years pursuant to section 302A-625."

SECTION 13. Section 302A-1102, Hawaii Revised Statutes, is amended to read as follows:

"[H§302A-1102]] Department of education; statewide [and regional] administrative services. The department shall serve as the central support system responsible for the overall administration of statewide educational policy, interpretation, and development of standards for compliance with state and federal laws, and coordination and preparation of a systemwide budget for the public schools. ~~[The department may establish regional administrative units to provide administrative support to the schools for personnel, fiscal, and procurement services. The regional administrative units may also be assigned responsibility~~

for the administration and operation of special education programs and special schools.]”

SECTION 14. Section 302A-1114, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1114 Power of appointment, removal. The department, from time to time, may appoint and remove such teachers, educational officers, and other personnel as may be necessary for carrying out the purposes of sections 302A-201, [302A-301,] 302A-401 to 302A-410, [302A-601,] 302A-1001 to 302A-1004, 302A-1101 to 302A-1122, 302A-1301 to 302A-1305, 302A-1401 to 302A-1403, and [302A-1501] 302A-1503 to 302A-1506, and regulate their duties, powers, and responsibilities, when not otherwise provided by law.”

SECTION 15. Section 302A-1125, Hawaii Revised Statutes, is amended to read as follows:

“[§]302A-1125[§] Educational objectives. The board shall formulate [such] policy and exercise [such] control as may be necessary to define a common set of educational goals that the schools [subject to the school/community-based management system] shall be responsible for fulfilling. The board shall also be responsible for formulating standards for measuring the efforts of each participating school toward achieving those goals each year. The participating schools shall be free to use all reasonable means to accomplish those goals with the resources available to them.”

SECTION 16. Section 302A-1128, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1128 Department powers and duties. [(a)] The department shall have entire charge and control and be responsible for the conduct of all affairs pertaining to public instruction in the public schools the department establishes and operates, including operating and maintaining the capital improvement and repair and maintenance programs for department and school facilities. The department may establish and maintain schools for secular instruction at such places and for such terms as in its discretion it may deem advisable and the funds at its disposal may permit. The schools may include high schools, kindergarten schools, schools or classes for [pregrade] early education, boarding schools, Hawaiian language medium education schools, and evening and day schools. The department may also maintain classes for technical and other instruction in any school where there may not be pupils sufficient in number to justify the establishment of separate schools for these purposes.

[(b)] The department shall regulate the courses of study to be pursued in all grades of the public schools it establishes and operates, and classify them by methods the department deems proper; provided that:

- (1) The course of study and instruction shall be regulated in accordance with the statewide performance standards established under section 302A-201;
- (2) All pupils shall be progressively competent in the use of computer technology; and
- (3) The course of study and instruction for the first twelve grades shall provide opportunities for all students to develop competency in a language in addition to English.

The department shall develop statewide educational policies and guidelines based on this subsection without regard to chapter 91.

For the purposes of this subsection, the terms "progressively competent in the use of computer technology" and "competency in a language in addition to English" shall be defined by policies adopted by the board. The board shall formulate statewide educational policies allowing the superintendent to exempt certain students from the requirements of paragraphs (2) and (3) without regard to chapter 91.

(e) Nothing in this section shall interfere with those persons attending a summer school.]”

SECTION 17. Section 302A-1130, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1130 Public schools special fees and charges[; grouping of students]. (a) The department may assess and collect special fees and charges from students for co-curricular activities.

(b) Special fees and charges collected from students for co-curricular activities shall be deposited into insured checking or savings accounts and expended by each individual school.

[~~(c) The department may group students within any public school in accordance with their abilities and educational needs.~~]

SECTION 18. Section 302A-1130.6, Hawaii Revised Statutes, is amended to read as follows:

“[§]302A-1130.6[] Textbook and instructional materials fee special account. There is established within the department a textbook and instructional materials fee special account, into which shall be deposited all fees and charges collected from students or their parents or guardians [pursuant to section 302A-1130.5.] for the loss, destruction, breakage, or damage of school textbooks, instructional materials, library books, equipment, or supplies. Disbursements from this special account shall be expended by the department for the purposes of purchasing, replacing, or repairing school textbooks, instructional materials, library books, equipment, or supplies.”

SECTION 19. Section 302A-1133.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The failure of a student to meet the requirements for regular attendance and punctuality shall subject the student’s parent, parents, or guardian to the penalties provided in section 302A-1135. Destruction of school property by a student, in addition to all other legal action that may be taken, shall subject the student’s parent, parents, or guardian to proceedings under section [302A-1130.5 or] 302A-1153, as appropriate.”

SECTION 20. Section 302A-1143, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1143 [Attend] Attending school in what [district.] service area. [All persons] A person of school age shall be required to attend the school of the [district] service area, as determined by the department, in which [they reside,] the person resides, unless [enrolled];

(1) The person is enrolled in a Hawaiian language medium education program[, or unless it appears to the department to be desirable to allow the attendance of pupils at a school in some other district, in

~~which case the department may grant this permission.] or charter school;~~

- (2) A geographic exception to attend a school in another service area is requested and granted at the discretion of the department; or
- (3) Out-of-service-area attendance is mandated by the department or by federal law."

SECTION 21. Section 302A-1149.5, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1149.5 After-school plus program revolving fund. (a) There is established in the state treasury the after-school plus program, hereinafter A+, revolving fund to be administered by the department.

(b) The ~~[after-school plus program]~~ A+ revolving fund shall consist of fees collected by the department for ~~[the after-school plus program]~~ A+ and all interest earned on the deposit or investment of moneys in the after-school plus program revolving fund.

(c) The department may establish appropriate fees and other charges to be assessed to each participant for ~~[the after-school plus program.]~~ A+. The revenues from those fees and charges shall be deposited into the revolving fund to be used for the program."

SECTION 22. Section 302A-1151.5, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~302A-1151.5]] Use of vacant public school facilities ~~[by charter schools]~~. (a) When the department considers whether to close any particular public school, it shall simultaneously give reasonable consideration to making all or portions of the facilities of the public school available ~~[for the exclusive occupancy and use by a charter school or joint occupancy and use by the charter school and the department; provided that the department may elect to use the facilities for the support of public education programs, with preference given to instructional uses over administrative uses.]~~ to charter schools and pre-plus programs; provided that the facilities may be used for any other purpose the board deems appropriate.

~~[(b) The department shall submit a notice of possible availability of a public school to the charter school review panel as early as possible; provided that if a vacancy is established, a notice of vacancy shall be submitted to the charter school review panel no later than thirty days after the establishment of the vacancy.~~

~~(c) Pursuant to section 302B-3.6 and upon receipt of a notice pursuant to subsection (b), the charter school review panel shall solicit applications from charter schools interested in using and occupying all or portions of the facilities of the public school and submit a prioritized list of charter schools to the department for final determination of which charter school, if any, shall be authorized to use and occupy the public school facilities.~~

~~(d) Upon the selection of a charter school to use a vacant school facility or portion of a school facility, the department and the charter school review panel shall enter into necessary agreements within ninety days of the selection to carry out the purposes of this section.~~

~~(e) After receipt by the charter school review panel of a notice pursuant to subsection (b), if the charter school review panel does not provide a prioritized list of charter schools because no charter school has requested to use the facilities of the public school, or if the department receives the prioritized list~~

but determines that no charter school on the list is an appropriate candidate to occupy and use the facilities, the department shall give reasonable consideration to making all or portions of the facilities of the public school, if closed, available for occupancy and use for other educational purposes.]

(b) The department shall identify unused public school facilities that may be appropriate for:

- (1) Charter schools;
- (2) Early learning programs, such as the pre-plus program; and
- (3) Any other purpose the board deems appropriate.

Suitable empty classrooms, as determined by the department, shall be inventoried for potential use by charter schools, early learning programs, such as the pre-plus program, or for any other purpose the board deems appropriate. Priority shall be given to facilities on sites with sufficient space for three or more classrooms.

~~[(f)]~~ (c) The department shall adopt rules necessary to carry out the purposes of this section.

~~[(g)]~~ (d) For purposes of this section, "public school" means any school that falls within the definition of public schools in section 302A-101, except for charter schools."

SECTION 23. Section 302A-1303.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established within the department of education the committee on weights to develop a weighted student formula pursuant to section 302A-1303.6. The committee ~~[shall:]~~ may:

- (1) Create a list of student characteristics that will be weighted;
- (2) Create a system of weights based upon the student characteristics that may be applied to determine the relative cost of educating any student;
- (3) Determine specific student weights, including their unit value;
- (4) Determine which moneys shall be included in the amount of funds to be allocated through the weighted student formula;
- (5) Recommend a weighted student formula to the board of education;
- (6) Perform any other function that may facilitate the implementation of the weighted student formula; and
- (7) Meet not less than once every odd-numbered year, to review the weighted student formula and, if the committee deems it necessary, recommend a new weighted student formula for adoption by the board of education."

SECTION 24. Section 302A-1303.6, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1303.6 Weighted student formula. Based upon recommendations from the committee on weights, the board of education~~[, not less than once every odd-numbered year, shall]~~ may adopt a weighted student formula for the allocation of moneys to public schools that takes into account the educational needs of each student. The department, upon the receipt of appropriated moneys, shall use the weighted student formula to allocate funds to public schools. Principals shall expend moneys provided to the principals' schools. This section shall only apply to charter schools for fiscal years in which the charter schools elect pursuant to section 302B-13 to receive allocations according to the

procedures and methodology used to calculate the weighted student formula[-] allocation."

SECTION 25. Section 302A-1305, Hawaii Revised Statutes, is amended to read as follows:

"[§302A-1305] Inactive student activity accounts. Student activity funds that are left in the school for a period of five years after the graduation of the class shall be deposited into the nonappropriated local school fund account unless the graduating class donates, in writing, the funds to the school within the five-year period. Moneys in the nonappropriated local school fund account may be used by the school."

SECTION 26. Section 302A-1312, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) For the purposes of this section, the superintendent of education shall develop and implement appropriate planning procedures and follow-up accountability reports to ensure sound planning, control, and accountability in the use of moneys allocated by the legislature~~[-, as prescribed by section 302A-1309]~~. The department of education shall submit an annual report to the legislature that shall include:

- ~~[(1) The priority listing established by section 302A-1505;~~
- ~~(2) (1) List of projects initiated by the department of education; and~~
- ~~[(3) (2) List of projects completed with associated actual cost."~~

SECTION 27. Section 302A-1401, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

"[§302A-1401] Administration and use of federal funds, including ~~[pre-grade] early education.~~"

2. By amending subsection (b) to read:

"(b) The board shall organize and conduct a program of public ~~[pre-grade] early~~ education to the extent that funds provided therefor by the United States government are, or from time to time may become, available. In establishing and carrying on the ~~[pregrade] early~~ education, any such federal funds shall be expended during any school year as nearly as practicable in each of the school supervisory districts of the State in the proportion that the number of inhabitants of each district of less than six years of age bears to the total number of the inhabitants of the entire State within the age limits, as shown by the latest report of the department of health preceding the opening of the school year."

SECTION 28. Section 302A-1404, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1404 Federal ~~[indirect-overhead-reimbursements-] impact aid military liaison.~~ (a) The department and the charter school administrative office, as appropriate, may retain and expend federal indirect overhead reimbursements for discretionary grants in excess of the negotiated rate for such reimbursements as determined by the director of finance and the superintendent or the director of finance and the executive director of the charter school administrative office.

(b) ~~[Beginning July 1, 2004, and for each]~~ Each fiscal year ~~[thereafter,]~~ the department of education may set aside \$100,000 of federal impact aid monies received pursuant to this section to:

- (1) Establish and fund a permanent, full-time military liaison position within the department of education; and
- (2) Fund the joint venture education ~~[program]~~ forum to facilitate interaction between the military community and the department of education.

The military liaison position established under paragraph (1) shall be exempt from chapter 76 but shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State."

SECTION 29. Section 302A-1502.4, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1502.4 Hawaii 3R's school repair and maintenance fund. (a) There is established the Hawaii 3R's school repair and maintenance fund (hereinafter, "fund") as a separate fund of Hawaii 3R's, a Hawaii nonprofit organization. Moneys received from the State, county, or federal government, private contributions of cash or other property, and the income and capital gains earned by the fund shall constitute its assets.

(b) Hawaii 3R's shall expend moneys from the fund in the form of either grants to organizations or contracts with private vendors for the repair and maintenance of public schools in Hawaii in accordance with this section.

(c) The fund may receive contributions, grants, endowments, or gifts in cash or otherwise from all sources, including corporations or other businesses, foundations, government, individuals, and other interested parties. The fund shall also receive moneys transferred to it from the school-level minor repairs and maintenance special fund established under section 302A-1504.5. The legislature intends that public and private sectors review and investigate all potential funding sources. The State may appropriate moneys to the fund; provided that any appropriations made by the State are not intended to supplant the funding of any existing school-level minor repairs and maintenance programs.

~~[(d) Hawaii 3R's shall appoint the members of the Hawaii 3R's school maintenance and repair advisory board, which shall be responsible for:~~

- ~~(1) Soliciting and otherwise raising funds for the fund;~~
- ~~(2) Establishing criteria for the expenditure of funds;~~
- ~~(3) Reviewing grant proposals using criteria established by Hawaii 3R's; and~~
- ~~(4) Making recommendations for grants and other specific expenditures.~~

Members of the advisory board shall be stakeholders in Hawaii's public educational system, including students, parents, alumni, principals, community and business leaders, and representatives from the department of education and the department of accounting and general services, who shall be represented on the advisory board.

~~(e) In managing the moneys in the fund, Hawaii 3R's shall exercise ordinary business care and prudence given the facts and circumstances prevailing at the time of action or decision. In doing so, Hawaii 3R's shall consider its long- and short-term needs in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, price trends, and general economic conditions.~~

~~(f) There may be an endowment component of the fund, and Hawaii 3R's may accumulate net income and add the same to the principal.~~

~~(g) The use of any state moneys may be restricted by the legislation appropriating these moneys to the fund.~~

~~(h) Hawaii 3R's may expend principal from the fund for the purposes of the fund.~~

~~(i) Any organization submitting a proposal to Hawaii 3R's for moneys shall meet the following standards at the time of application:~~

- ~~(1) Be a for-profit organization duly registered under the laws of the State, or be a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax, or be an agency of the State or a county;~~
- ~~(2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation;~~
- ~~(3) In the case of an applicant that is not a state or county government agency, have bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of a potential situation involving a conflict of interest;~~
- ~~(4) Have experience with the project or in the program area for which the proposal is being made; and~~
- ~~(5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments.~~

~~(j) All proposals submitted to Hawaii 3R's for moneys shall be approved by the department for consistency in meeting design and materials standards for public schools.~~

~~(k) Organizations or agencies to which moneys are awarded shall agree to comply with the following conditions before receiving the award:~~

- ~~(1) Use persons qualified to engage in the activity to be funded;~~
- ~~(2) Comply with the applicable federal, state, and county laws; and~~
- ~~(3) Comply with any other requirements prescribed by Hawaii 3R's to ensure adherence by the recipient of the award with applicable federal, state, and county laws and with the purposes of this section.~~

~~(d) Chapter 103D shall not apply to organizations or agencies that apply for grants or contracts under this section; provided that Hawaii 3R's shall be held accountable for the use of the funds under a contract with the department.~~

~~(m) Any contract awarded by Hawaii 3R's shall be made with as much competition as is practical to execute its purposes.~~

~~(n) The fund shall be audited annually by an independent auditor. The results of each annual audit shall be submitted to the department not later than thirty days from the date Hawaii 3R's receives the audit results. In addition, Hawaii 3R's shall retain for a period of three years and permit the department, state legislators, and the auditor, or their duly authorized representatives, to inspect and have access to any documents, papers, books, records and other evidence that is pertinent to the fund.~~

~~(e) (e) The fund shall not be placed in the state treasury, and the State shall not administer the fund, nor shall the State be liable for the operation or solvency of the fund or Hawaii 3R's.~~

~~(p) For every dollar of state moneys granted by the fund to the project, there shall be a minimum of \$1 in value matched by Hawaii 3R's from private, federal, county, or community service.~~

~~(q) The superintendent of education shall submit an annual report of the progress of the Hawaii 3R's school repair and maintenance fund no later than twenty days prior to the convening of each regular session of the legislature.]”~~

SECTION 30. Section 302A-1507, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1507 Classroom cleaning project; established. (a) There is established a classroom cleaning project in all public schools, excluding charter schools. Each school, through its school community council, may develop mechanisms to provide for classroom cleaning, including but not limited to having parent, student, or other community groups clean the classrooms on a regular, continuing basis.

(b) Schools may use any available resources to achieve the purposes of this section; provided that no full-time custodial staff employed at the school shall be displaced.

(c) Nothing in this section shall prohibit the use of volunteers for classroom cleaning.”

SECTION 31. Section 302A-301, Hawaii Revised Statutes, is repealed.

SECTION 32. Section 302A-401.5, Hawaii Revised Statutes, is repealed.

SECTION 33. Section 302A-429, Hawaii Revised Statutes, is repealed.

SECTION 34. Section 302A-431.5, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 302A-431.6, Hawaii Revised Statutes, is repealed.

SECTION 36. Section 302A-431.7, Hawaii Revised Statutes, is repealed.

SECTION 37. Section 302A-431.8, Hawaii Revised Statutes, is repealed.

SECTION 38. Section 302A-431.9, Hawaii Revised Statutes, is repealed.

SECTION 39. Section 302A-444, Hawaii Revised Statutes, is repealed.

SECTION 40. Section 302A-445, Hawaii Revised Statutes, is amended¹ to read as follows:

~~[[“§302A-445]—Rules. The board shall adopt necessary rules under chapter 91 to administer and implement sections 302A-444 and 302A-445.”]~~

SECTION 41. Section 302A-446, Hawaii Revised Statutes, is repealed.

SECTION 42. Section 302A-462, Hawaii Revised Statutes, is repealed.

SECTION 43. Section 302A-464, Hawaii Revised Statutes, is repealed.

SECTION 44. Section 302A-465, Hawaii Revised Statutes, is repealed.

SECTION 45. Section 302A-466, Hawaii Revised Statutes, is repealed.

SECTION 46. Section 302A-467, Hawaii Revised Statutes, is repealed.

SECTION 47. Section 302A-601.3, Hawaii Revised Statutes, is repealed.

SECTION 48. Section 302A-606, Hawaii Revised Statutes, is repealed.

SECTION 49. Section 302A-633.5, Hawaii Revised Statutes, is repealed.

SECTION 50. Section 302A-638.5, Hawaii Revised Statutes, is repealed.

SECTION 51. Section 302A-640, Hawaii Revised Statutes, is repealed.

SECTION 52. Section 302A-705, Hawaii Revised Statutes, is repealed.

SECTION 53. Section 302A-831, Hawaii Revised Statutes, is repealed.

SECTION 54. Section 302A-1104, Hawaii Revised Statutes, is repealed.

SECTION 55. Section 302A-1127, Hawaii Revised Statutes, is repealed.

SECTION 56. Section 302A-1130.5, Hawaii Revised Statutes, is repealed.

SECTION 57. Section 302A-1142, Hawaii Revised Statutes, is repealed.

SECTION 58. Section 302A-1144, Hawaii Revised Statutes, is repealed.

SECTION 59. Section 302A-1146, Hawaii Revised Statutes, is repealed.

SECTION 60. Section 302A-1150, Hawaii Revised Statutes, is repealed.

SECTION 61. Subpart A of part V of chapter 302A, Hawaii Revised Statutes, is repealed.

SECTION 62. Section 302A-1302, Hawaii Revised Statutes, is repealed.

SECTION 63. Section 302A-1303, Hawaii Revised Statutes, is repealed.

SECTION 64. Section 302A-1308, Hawaii Revised Statutes, is repealed.

SECTION 65. Section 302A-1313, Hawaii Revised Statutes, is repealed.

SECTION 66. Section 302A-1501, Hawaii Revised Statutes, is repealed.

SECTION 67. Section 302A-1501.5, Hawaii Revised Statutes, is repealed.

SECTION 68. Section 302A-1502, Hawaii Revised Statutes, is repealed.

SECTION 69. Section 302A-1502.6, Hawaii Revised Statutes, is repealed.

SECTION 70. Section 302A-1505, Hawaii Revised Statutes, is repealed.

ACT 134

SECTION 71. Section 302A-1506.5, Hawaii Revised Statutes, is repealed.

SECTION 72. Section 302B-3.6, Hawaii Revised Statutes, is repealed.

SECTION 73. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 74. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 75. This Act shall take effect upon its approval; provided that section 38 shall take effect on June 30, 2015.

(Approved June 19, 2012.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 134

H.B. NO. 2513

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature reaffirms that it is in the general welfare of the State to protect, preserve, care for, and improve the physical and mental health of Hawaii's children by making available at the public schools first aid and emergency care, preventive health care, health appraisals and follow-ups, and health room facilities. For those purposes, the department of education is authorized to establish a statewide school health services program. The purpose of this Act is to provide the department flexibility in administering and implementing the health services program.

SECTION 2. Section 302A-853, Hawaii Revised Statutes, is amended to read as follows:

“[§302A-853]—Department implementation.] Administration of medication. ~~[The department shall implement this program with the present health services now provided to those schools under the pilot project established under Act 130, Session Laws of Hawaii 1970, to each public school, and further provide the necessary number of health aides to serve each public school. The department may provide health-related screening services at each public school.]~~ School health aides may assist students by administering oral and topical medication, and in emergency situations, other premeasured medication; provided that:

- (1) If the student receiving the medication is a minor, a parent or guardian requests and authorizes the administration of medication;
- (2) The medication has been prescribed by a licensed physician, as defined in section 334-1, or by a practitioner with prescriptive authority;

- (3) The administration of the medication is with the approval of the department of health; and
- (4) The administration of the medication is necessary for the health of the student and for the student's attendance at school."

SECTION 3. Section 302A-854, Hawaii Revised Statutes, is amended to read as follows:

"[§302A-854] School health aides[-]; compensation. All full-time school health aides employed in the department shall be employed and have their compensation fixed in accordance with chapter 76 and the appropriate collective bargaining agreement, executive order, executive directive, or rule; ~~provided that the compensation shall be based on a six and one-half hour work day; provided further that:~~

- (1) ~~The monthly rate of compensation for all school health aides employed less than full-time shall be based on the number of hours they actually work;~~
- (2) ~~The monthly rate of compensation for full-time health aides so determined shall be multiplied by ten and then divided by twelve and the resulting amount shall be the employee's monthly salary payable over a twelve-month period; and~~
- (3) ~~The health aides shall have the same working schedule and leave allowance as school teachers in the department]."~~

SECTION 4. Section 302A-855, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 19, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 135

S.B. NO. 2773

A Bill for an Act Relating to Libraries.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 312-2.1, Hawaii Revised Statutes, is amended to read as follows:

"§312-2.1 Appointment of state librarian; duties; salary. (a) The state librarian shall be appointed by the board of education, without regard to chapter 76, shall be under the direction of the board, shall be responsible for the operation, planning, programming, and budgeting of all community/school and public libraries within the State, and may be removed by a majority vote of its members. The state librarian may be appointed:

- (1) Without regard to the state residency provisions of section 78-1(b); and

(2) For a term of up to four years.

(b) The salary of the state librarian shall be set by the board of education at a rate no greater than \$120,000 a year.

(c) The state librarian may appoint, without regard to chapter 76, one secretary for the state librarian. The secretary for the state librarian shall serve at the pleasure of the state librarian."

SECTION 2. Section 312-3, Hawaii Revised Statutes, is amended to read as follows:

"§312-3 Exchange of librarians. The ~~[board of education]~~ state librarian may contract for the exchange of librarians with librarians of any state, country, or territory in accordance with this section, except as otherwise provided in section 78-27. Local librarians so exchanged shall be paid their regular salaries out of the funds appropriated for personal services in the library budget for the library concerned. The qualifications of all librarians from any such state, country, or territory so exchanged shall be equal to those of the local librarians exchanged. In the selection of local librarians for exchange, preference shall be given to persons born in the State. The requirements of citizenship shall not apply to any librarian coming to the State from any foreign state, country, or territory under any such contract of exchange. All librarians so exchanged shall furnish their own transportation to and from the state, country, or territory with which exchanged.

No compensation shall be paid by the State to visiting exchange librarians; provided that in any case where the local exchanged librarian becomes incapacitated or, for any reason, leaves the exchanged position permanently, the library concerned may pay the visiting exchange librarian an amount not to exceed the salary rating of the local exchanged librarian, such an arrangement to continue until the end of the period of exchange or until such time as some satisfactory adjustment has been made."

SECTION 3. Section 312-6, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 19, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 136

H.B. NO. 2232

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the American Congress of Obstetricians and Gynecologists, formerly known as the American College of Obstetricians and Gynecologists, recommends that pelvic examinations undertaken for teaching purposes should be performed with the specific informed consent

of the patient. Informed consent ensures the patient understands the procedure and its attendant risks and benefits and agrees to the procedure being performed. The legislature also finds that the American Medical Association recommends discussing medical student involvement with patient procedures whenever possible.

The purpose of this Act is to require informed consent in certain circumstances before performing pelvic examinations for medical and training purposes on anesthetized or unconscious female patients.

SECTION 2. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§453- Pelvic examinations on anesthetized or unconscious female patients. A physician, osteopathic physician, surgeon, or student participating in a course of instruction, residency program, or clinical training program shall not perform a pelvic examination on an anesthetized or unconscious female patient unless:

- (1) The patient gives prior verbal or written informed consent to the pelvic examination;
- (2) The performance of a pelvic examination is within the scope of care for the surgical procedure or diagnostic examination scheduled to be performed on the patient; or
- (3) The patient is unconscious and the pelvic examination is required for diagnostic purposes.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 19, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 137

S.B. NO. 243

A Bill for an Act Relating to the Western Interstate Commission for Higher Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 304A, Hawaii Revised Statutes, is amended by adding four new sections to part VII, subpart D, to be appropriately designated and to read as follows:

“§304A-A Definitions. As used in this subpart, unless the context clearly requires otherwise:

“Commission” means the Western Interstate Commission for Higher Education.

“Hawaii commission” means the Hawaii western interstate commission for higher education established under section 304A-B.

“Hawaii commissioners” means the members of the Hawaii western interstate commission for higher education.

§304A-B Hawaii western interstate commission for higher education. (a)

There is established within the University of Hawaii for administrative purposes only the Hawaii western interstate commission for higher education comprised of the state commissioners to the Western Interstate Commission for Higher Education, established under Article III of the Western Regional Education Compact.

(b) The members of the Hawaii commission shall be the commissioners appointed by the governor to the Western Interstate Commission for Higher Education pursuant to section 304A-3204. The positions of the Hawaii commissioners shall be placed within the University of Hawaii for administrative purposes.

§304A-C Professional student exchange program; repayment policy. The

Hawaii commission may establish a repayment policy for students who receive any financial support from funds appropriated by the legislature for the Hawaii professional student exchange program of the Western Interstate Commission for Higher Education.

§304A-D Professional student exchange program special fund. (a)

There is established a professional student exchange program special fund to be administered and expended by the Hawaii commission.

(b) The following moneys shall be deposited into the special fund:

- (1) Principal and interest payments received as repayment of financial support from former or current participants of the professional student exchange program, pursuant to section 304A-C; and
- (2) Interest earned or accrued on moneys in the special fund.
- (c) Moneys in the special fund shall be expended to:
 - (1) Support the professional student exchange program's activities, including the provision of financial support to participants at Western Interstate Commission for Higher Education receiver institutions; and
 - (2) Enforce the collection of delinquent obligations."

SECTION 2. Section 304A-3205, Hawaii Revised Statutes, is amended to read as follows:

"~~§§304A-3205~~ **Expenditures; reports.** Expenditures by the Hawaii commission, including the amounts fixed annually as the equal contribution of each member to the compact, shall be made upon warrants issued by the state comptroller based upon vouchers approved by any one of the Hawaii commissioners. A report of the activities and expenses of the Hawaii commissioners and a proposed program for the State's continuing participation in the activities of the Western Interstate Commission for Higher Education, including a budget request, shall be submitted by the Hawaii commissioners to the legislature for each regular legislative session."

SECTION 3. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute the appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved June 19, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 138

S.B. NO. 2740

A Bill for an Act Relating to the Housing Loan and Mortgage Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the affordable housing crisis continues to be one of the State's most significant and challenging social problems and is a critical issue for many Hawaii residents. As the cost of housing increases, the State must continue to assist residents in obtaining affordable housing.

The purpose of this Act is to provide that assistance by increasing the Hula Mae multifamily revenue bond authorization from \$500,000,000 to \$750,000,000.

SECTION 2. Act 291, Session Laws of Hawaii 1980, as amended by Act 304, Session Laws of Hawaii 1996, as amended by Act 185, Session Laws of Hawaii 2004, as amended by Act 231, Session Laws of Hawaii 2007, as amended by Act 121, Session Laws of Hawaii 2008, is amended by amending section 11 to read as follows:

"SECTION 11. Issuance of revenue bond; amount authorized. Revenue bonds may be issued by the Hawaii housing finance and development corporation pursuant to part III, chapter 39 and subpart A of part III of chapter 201H, Hawaii Revised Statutes, in an aggregate principal amount not to exceed ~~[\$500,000,000]~~ \$750,000,000 at such times and in such amounts as the Hawaii housing finance and development corporation deems advisable for the purpose of undertaking and maintaining any of the housing loan programs under subpart A of part III of chapter 201H, Hawaii Revised Statutes, relating to the funding or purchasing of eligible project loans."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved June 19, 2012.)

ACT 139

S.B. NO. 2776

A Bill for an Act Relating to Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. In June 2011, the governor, chief justice, senate president, house speaker, and director of public safety joined together to begin developing a data-driven justice reinvestment strategy to bring out-of-state prisoners back to Hawaii, reduce spending on corrections, and reinvest savings generated in strategies that would reduce recidivism and crime and increase public safety. To this end, they sought assistance from the Bureau of Justice Assistance, a division of the United States Department of Justice, and the Pew Center on the States. The state leaders established a bipartisan, inter-branch justice reinvestment working group comprising leading state and local officials to receive intensive technical

assistance from the Council of State Governments Justice Center. The Council of State Governments Justice Center assisted the working group in analyzing data from every aspect of Hawaii's criminal justice and corrections systems.

The analysis revealed that crime and victimization rates have declined, as have arrests and felony convictions for violent and property crimes. However, the population under probation supervision and incarceration has not declined, and in some cases has increased. From fiscal year 2000 to fiscal year 2011, the State's prison and jail population grew eighteen per cent, from 5,118 inmates to 6,043 inmates. Expenditures for the corrections division of the department of public safety increased seventy per cent from \$112,000,000 in fiscal year 2000 to \$190,000,000 in fiscal year 2011. Approximately one-third of Hawaii's incarcerated population is housed in out-of-state facilities. The cost of housing offenders out-of-state was \$45,000,000 in fiscal year 2011.

The analysis of the data from Hawaii's criminal justice and corrections systems identified three areas for improvement: pretrial process, parole, and payment of restitution. This Act establishes a statutory structure to improve the criminal justice system, relying on the department of public safety, Hawaii paroling authority, and adult probation services to effectively implement changes to policies and practices.

The implementation of these changes to address the target areas is expected to gradually reduce the current incarcerated population and generate savings of approximately five hundred beds and \$9,000,000 by the end of fiscal year 2013, eight hundred fifty beds and \$19,000,000 in fiscal year 2014, and one thousand fifty beds and \$26,000,000 in fiscal year 2015. Realizing these savings will require initial and continued reinvestment in expanding and strengthening victim services, notification, and restitution collection; reentry and community-based treatment programs for pre-trial, probation, and parole populations; pretrial and risk assessments; probation and parole officers; and research and planning staff in the department of public safety.

This Act will improve the State's criminal justice system and increase public safety by focusing on incarceration, supervision, and treatment in a manner that most efficiently addresses the recidivism rate, thereby increasing public safety.

The purpose of this Act is to address the areas of pretrial process, parole, and payment of restitution to reduce costly inefficiencies, hold offenders more accountable, and reinvest savings in more effective public safety strategies.

PART II

SECTION 2. The pretrial population has increased due to longer lengths of stay. The purpose of this part is to require that an objective assessment be conducted within the first three working days of a person's commitment to a community correctional center to allow the courts to more quickly exercise discretion in determining whether to release a pre-trial offender.

SECTION 3. Section 353-10, Hawaii Revised Statutes, is amended to read as follows:

"§353-10 Reentry intake service centers. (a) There shall be within the department of public safety, a reentry intake service center for adults in each of the counties[,] to screen, evaluate, and classify the admission of persons to community correctional centers and to provide for the successful reentry of persons back into the community. Each center shall be directed and managed by a manager and shall be staffed by a team of psychiatrists, social workers, technicians,

and other personnel as may be necessary. The director of public safety may appoint full-time or part-time professional and clerical staff or contract for professional services to carry out the duties of the centers as identified in this section.

- (b) The centers shall:
 - (1) Provide orientation, guidance, and technical services;
 - (2) Provide social-medical-psychiatric-psychological diagnostic evaluation;
 - (3) ~~Provide~~ Conduct internal pretrial risk assessments on adult offenders ~~[for the courts and assist in the conduct of presentence assessments on adult offenders and the preparation of presentence reports when requested by the courts;]~~ within three working days of admission to a community correctional center which shall then be provided to the court for its consideration; provided that this paragraph shall not apply to persons subject to county or state detainers, holds, or persons detained without bail, persons detained for probation violation, persons facing revocation of bail or supervised release, and persons who have had a pretrial risk assessment completed prior to admission to a community correctional center. For purposes of this paragraph, "pretrial risk assessment" means an objective, research-based, validated assessment tool that measures a defendant's risk of flight and risk of criminal conduct while on pretrial release pending adjudication;
 - (4) Assist in the conduct of presentence assessments on adult offenders and the preparation of presentence reports when requested by the courts;
- [4] (5) Provide correctional prescription program planning and security classification;
- [5] (6) Provide ~~such~~ other personal and correctional services as needed for both detained and committed persons;
- [6] (7) Monitor and record the progress of persons assigned to correctional facilities who undergo further treatment or who participate in prescribed correctional programs;
- [7] (8) Ensure that the present and future reentry needs of persons committed to correctional facilities are being evaluated and met in an effective and appropriate manner;
- [8] (9) Provide additional reentry services to include working closely and collaborating with the furlough programs in each county that are currently managed by the department's institutions division;
- [9] (10) Work closely and collaborate with the Hawaii paroling authority; and
- [10] (11) Work closely and collaborate with the corrections program services division."

PART III

SECTION 4. The number of prisoners denied parole has increased. The purpose of this part is to: increase the number of members of the Hawaii paroling authority; require the Hawaii paroling authority to use an objective risk assessment to determine the programs that offenders shall be required to complete prior to release in order to focus resources on the offenders most likely to benefit from programming and supervision; and reduce recidivism by using swift and certain, yet less costly and severe, responses to parole condition violations.

SECTION 5. Section 353-61, Hawaii Revised Statutes, is amended to read as follows:

“§353-61 Hawaii paroling authority; appointment; tenure; qualifications. (a) Members of the paroling authority shall be nominated by a panel composed of the chief justice of the Hawaii supreme court, the director, the president of the ~~[bar association of Hawaii,]~~ Hawaii State Bar Association, a representative designated by the head of the Interfaith Alliance Hawaii, a member from the general public to be appointed by the governor, and the president of the Hawaii chapter of the National Association of Social Workers. The panel shall submit to the governor the names of not less than three persons, designated as the nominees, for chairperson or as a member, for each vacancy. The requirement for nomination by the panel established under this section shall only apply to a nominee's nomination by the governor to an initial term on the paroling authority and not to any subsequent consecutive term of a sitting paroling authority member or chairperson whose initial appointment to office was made pursuant to a nomination by the panel.

(b) The governor shall appoint, in ~~[the]~~ manner prescribed by section 26-34, a paroling authority to be known as the Hawaii paroling authority, to consist of ~~[three]~~ five members, one of whom shall be designated chairperson. Appointments shall be made for terms of four years, commencing from the date of expiration of the last preceding term. Any vacancy in an unexpired term shall be filled by appointment for the ~~[remainder]~~ of the unexpired term. Nominees to the authority shall be selected on the basis of their qualifications to make decisions that will be compatible with the welfare of the community and of individual offenders, including their background and ability for appraisal of offenders and the circumstances under which offenses were committed.”

SECTION 6. Section 353-63, Hawaii Revised Statutes, is amended to read as follows:

“§353-63 Service of Hawaii paroling authority members; compensation; expenses. The chairperson of the Hawaii paroling authority shall serve on a full-time basis. The other ~~[two]~~ four members shall serve on a part-time basis. Effective July 1, ~~[2005,]~~ 2012, the chairperson of the Hawaii paroling authority shall be paid a salary set at eighty-seven per cent of the salary of the director of public safety. The compensation of each of the part-time members shall be eighty per cent of the hourly wage paid the chairperson. For each hour engaged in the official duties of the authority, each part-time member of the authority shall be paid an hourly wage at the percentage rate specified in this section based on the hourly wage paid the chairperson; provided that compensation shall not exceed eighty per cent of the total regular working hours in a month; provided further that part-time members shall not be entitled to any vacation, sick leave, or other benefits except as provided in this section. All paroling authority members shall receive their necessary expenses for travel and incidentals ~~[which]~~ that shall be paid from appropriations provided the authority for such purposes, on vouchers approved by the director of public safety.”

SECTION 7. Section 353-66, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Any paroled prisoner retaken and reimprisoned as provided in this chapter shall be confined according to the paroled prisoner's sentence for that portion of the paroled prisoner's term remaining unserved at time of parole, but successive paroles may, in the discretion of the paroling authority,

be granted to the prisoner during the life and in respect of the sentence. If the paroled prisoner is retaken and reimprisoned for violating a condition of parole but has not:

- (1) Been charged with a new felony offense or a new misdemeanor offense under chapter 707 or section 709-906;
- (2) Absconded or left the State without permission from the paroling authority;
- (3) Violated conditions applicable to sex offenders, such as registering as a sex offender or conditions related to proximity to specified locations or persons; or
- (4) Been previously reimprisoned for violating the conditions of parole on the current offense,

the paroled prisoner shall be confined for no more than six months or for that portion of the paroled prisoner's term remaining unserved at the time of parole, whichever is shorter, so long as the paroling authority has approved a parole plan as set forth under section 706-670(3) and (4). The minimum term of imprisonment shall be as determined by the court or the paroling authority, as the case may be. The prisoner shall be given credit for time served in custody pending a hearing on revocation of parole as it relates to the six-month parole revocation. No prisoner shall be incarcerated beyond the expiration of the prisoner's maximum term of imprisonment."

SECTION 8. Section 706-670, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) Parole hearing. A person sentenced to an indeterminate term of imprisonment shall receive an initial parole hearing at least one month before the expiration of the minimum term of imprisonment determined by the Hawaii paroling authority pursuant to section 706-669. If the person has been sentenced to multiple terms of imprisonment, the parole hearing shall not be required until at least one month before the expiration of the minimum term that expires last in time. A validated risk assessment shall be used to determine the person's risk of re-offense and suitability for community supervision. For purposes of this subsection, "validated risk assessment" means an actuarial tool to determine a person's likelihood of engaging in future criminal behavior. The department of public safety shall select a research-based risk assessment tool and shall validate the accuracy of the risk assessment tool at least every five years in consultation with the paroling authority. Assessments shall be performed by department of public safety staff who are trained in the use of the risk assessment tool. Except for good cause shown to the paroling authority, a person who is assessed as low risk for re-offending shall be granted parole upon completing the minimum sentence, unless the person:

- (a) Is found to have an extensive criminal history record that is indicative of a likelihood of future criminal behavior in spite of the finding by the risk assessment by the paroling authority;
- (b) Is found to have committed misconduct while in prison that is equivalent to a misdemeanor or felony crime within thirty-six months of the expiration of the minimum term of imprisonment;
- (c) Has any pending felony charges in the State;
- (d) Is incarcerated for a sexual offense under part V of chapter 707 or child abuse under part VI of chapter 707; or
- (e) Does not have a parole plan as set forth under section 706-670(3) and (4), as approved by, and at the discretion of, the paroling authority.

If parole is not granted at ~~[that time,]~~ the initial parole hearing, additional hearings shall be held at twelve-month intervals or less until parole is granted or

the maximum period of imprisonment expires. The State shall have the right to be represented at the initial parole hearing and all subsequent parole hearings by the prosecuting attorney, who may present written testimony and make oral comments[~~-, and the~~]. The authority shall consider the testimony and comments in reaching its decision. The authority shall notify the appropriate prosecuting attorney of the hearing at the time the prisoner is given notice of the hearing."

PART IV

SECTION 9. The purpose of this part is to ensure accountability for victims and offenders by improving the collection of restitution by the department of public safety and ensuring that all felony offenders are supervised for a minimum period of time after their release from incarceration.

SECTION 10. Section 353-22.6, Hawaii Revised Statutes, is amended to read as follows:

"§353-22.6 Victim restitution. The director of public safety shall enforce victim restitution orders against all moneys earned by the [prisoner] inmate or deposited or credited to the inmate's individual account while incarcerated. The amount deducted [and paid once annually to the victim] shall be [ten] twenty-five per cent of the [prisoner's annual earnings.] total of all moneys earned, new deposits, and credits to the inmate's individual account. The moneys intended for victim restitution shall be deducted monthly and paid to the victim once the amount reaches \$25, or annually, whichever is sooner. This section shall not apply to moneys earned on work furlough pursuant to section 353-17."

SECTION 11. Section 353-69, Hawaii Revised Statutes, is amended to read as follows:

"§353-69 Parole when. [No] Except as provided in section 706-670, no parole shall be granted unless it appears to the Hawaii paroling authority that there is a reasonable probability that the prisoner concerned will live and remain at liberty without violating the law and that the prisoner's release is not incompatible with the welfare and safety of society."

SECTION 12. Section 706-670, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

"(3) Prisoner's plan and participation. Each prisoner shall be given reasonable notice of the prisoner's parole hearing and shall prepare a parole plan, setting forth the manner of life the prisoner intends to lead if released on parole, including specific information as to where and with whom the prisoner will reside [and], a phone contact where the prisoner can be reached, and what occupation or employment the prisoner will follow[-], if any. The prisoner shall be paroled in the county where the prisoner had a permanent residence or occupation or employment prior to the prisoner's incarceration, unless the prisoner will: reside in a county in which the population exceeds eight-hundred thousand persons; reside in a county in the State in which the committed person has the greatest family or community support, opportunities for employment, job training, education, treatment, and other social services, as determined by the Hawaii paroling authority; or be released for immediate departure from the State. The institutional parole staff shall render reasonable aid to the prisoner in the preparation of the prisoner's plan and in securing information for submission to the authority. In addition, the prisoner shall:

- (a) Be permitted to consult with any persons whose assistance the prisoner reasonably desires, including the prisoner's own legal counsel, in preparing for a hearing before the authority;
- (b) Be permitted to be represented and assisted by counsel at the hearing;
- (c) Have counsel appointed to represent and assist the prisoner if the prisoner so requests and cannot afford to retain counsel; and
- (d) Be informed of the prisoner's rights as set forth in this subsection."

PART V

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2012; provided that:

- (1) Section 3 shall take effect on January 1, 2013;
- (2) Section 7 shall take effect on July 1, 2012, for any individual on parole supervision on or after July 1, 2012;
- (3) Section 8 shall take effect on July 1, 2012, and shall be applicable to individuals committing an offense on or after that date; and
- (4) Sections 3, 7, 8, 10, and 11 shall be repealed on July 1, 2018, and sections 353-10, 353-66, 706-670(1), 353-22.6, and 353-69, Hawaii Revised Statutes, shall be reenacted in the form on which it read on June 30, 2018.

(Approved June 20, 2012.)

ACT 140

H.B. NO. 2515

A Bill for an Act Relating to Crime.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In June 2011, the governor, chief justice, senate president, speaker of the house of representatives, and director of public safety collaborated to develop a data-driven justice reinvestment strategy to bring out-of-state prisoners back to Hawaii, reduce spending on corrections, and reinvest savings generated in strategies to reduce recidivism and crime and increase public safety. The group sought assistance from the Bureau of Justice Assistance, a division of the United States Department of Justice, and the Pew Center on the States. The group established a bipartisan, inter-branch justice reinvestment working group comprising leading state and local officials to receive intensive technical assistance from the Council of State Governments Justice Center. The Council of State Governments Justice Center assisted the working group in analyzing data from Hawaii's criminal justice and corrections systems.

The data analysis revealed that the rates of crime and victimization and arrests and felony convictions for violent and property crimes have declined. However, the incarcerated population and the number of those under probation supervision, in some cases, have increased. From fiscal year 2000 to fiscal year 2011, the State's incarcerated population grew eighteen per cent, from 5,118 to 6,043. Expenditures for the corrections division of the department of public safety increased seventy per cent, from \$112,000,000 in fiscal year 2000 to \$190,000,000 in fiscal year 2011. Approximately one-third of Hawaii's incarcer-

ated population is housed in out-of-state facilities. The cost of housing offenders in out-of-state facilities was \$45,000,000 in fiscal year 2011.

The analysis also identified other areas needing improvement: the sentencing of felony drug offenders and probation terms for offenders. The purpose of this Act is to address those areas.

Under section 706-622.5, Hawaii Revised Statutes, the court may impose a probation sentence for an offender's first felony conviction for a drug possession offense. If an offender faces a second felony conviction for drug possession and is subject to the repeat offender statute, the court is required to impose a prison sentence. This Act amends section 706-622.5, Hawaii Revised Statutes, to allow second-time drug offenders to be eligible for probation.

Probation terms for class B and C felons in Hawaii average five years while the national average is three years. The risk of recidivism is highest during the first and second year of probation. Therefore, the public safety benefit of supervising offenders for the third, fourth, and fifth years is less significant. Moreover, supervising offenders for such long periods requires resources that could be spent supervising offenders who pose a higher risk or have recently been placed on probation. This Act modifies the probation terms for certain class B and C offenders to not exceed four years.

SECTION 2. Section 706-622.5, Hawaii Revised Statutes, is amended as follows:

1. By amending the title to read:

"§706-622.5 Sentencing for [first-time] drug offenders; expungement."

2. By amending subsection (1) to read:

"(1) Notwithstanding section 706-620(3), a person convicted for the first or second time for any offense under section 329-43.5 involving the possession or use of drug paraphernalia or any felony offense under part IV of chapter 712 involving the possession or use of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, but not including any offense under part IV of chapter 712 involving the distribution or manufacture of any such drugs or substances and not including any methamphetamine trafficking offenses under sections 712-1240.7 and 712-1240.8, is eligible to be sentenced to probation under subsection (2) if the person meets the following criteria:

- (a) The court has determined that the person is nonviolent after reviewing the person's criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;
- (b) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index; and
- (c) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program."

3. By amending subsection (4) to read:

"(4) The court, upon written application from a person sentenced under this part, shall issue a court order to expunge the record of conviction for that particular offense; provided that a person has successfully completed the sub-

stance abuse treatment program and complied with other terms and conditions of probation. A person sentenced to probation under this section who has not previously been sentenced under this section shall be eligible for one time only for expungement under this subsection.”

SECTION 3. Section 706-623, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) When the court has sentenced a defendant to be placed on probation, the period of probation shall be as follows, unless the court enters the reason therefor on the record and sentences the defendant to a shorter period of probation:

- (a) Ten years upon conviction of a class A felony;
- (b) Five years upon conviction of a class B or class C felony[;] under part II, V, or VI of chapter 707, chapter 709, and part I of chapter 712 and four years upon conviction of any other class B or C felony;
- (c) One year upon conviction of a misdemeanor; except that upon a conviction under section 586-4, 586-11, or 709-906, the court may sentence the defendant to a period of probation not exceeding two years; or
- (d) Six months upon conviction of a petty misdemeanor; provided that up to one year may be imposed upon a finding of good cause.

The court, on application of a probation officer, on application of the defendant, or on its own motion, may discharge the defendant at any time. Prior to granting early discharge, the defendant’s probation officer shall be required to report to the court concerning the defendant’s compliance or non-compliance with the conditions of the defendant’s probation and the court shall afford the prosecuting attorney an opportunity to be heard. The terms of probation provided in this part, other than in this section, shall not apply to sentences of probation imposed under section 706-606.3.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that section 3 shall take effect on January 1, 2013, and apply to offenses committed on or after that date.

(Approved June 20, 2012.)

ACT 141

H.B. NO. 2599

A Bill for an Act Relating to Reentry Intake Service Centers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 353-10, Hawaii Revised Statutes, is amended to read as follows:

“§353-10 **Reentry intake service centers.** There shall be within the department of public safety, a reentry intake service center for adults in each of the counties, to screen, evaluate, and classify the admission of persons to community correctional centers and to provide for the successful reentry of persons back into the community. Each center shall be directed and managed by a manager

ACT 142

and shall be staffed by a team of psychiatrists, social workers, technicians, and other personnel as may be necessary. The director of public safety may appoint full-time or part-time professional and clerical staff or contract for professional services to carry out the duties of the centers as identified in this section.

The centers shall:

- (1) Provide orientation, guidance, and technical services;
- (2) Provide social-medical-psychiatric-psychological diagnostic evaluation;
- (3) Provide pretrial assessments on adult offenders ~~[for the courts and assist in the conduct of presentence assessments on adult offenders and the preparation of presentence reports when requested by the courts;]~~ that are consented to by the defendant or that are ordered by the court;
- (4) Provide correctional prescription program planning and security classification;
- (5) Provide such other personal and correctional services as needed for both detained and committed persons;
- (6) Monitor and record the progress of persons assigned to correctional facilities who undergo further treatment or who participate in prescribed correctional programs;
- (7) Ensure that the present and future reentry needs of persons committed to correctional facilities are being evaluated and met in an effective and appropriate manner;
- (8) Provide additional reentry services to include working closely and collaborating with the furlough programs in each county that are currently managed by the department's institutions division;
- (9) Work closely and collaborate with the Hawaii paroling authority; ~~[and]~~
- (10) Work closely and collaborate with the corrections program services division~~[-]; and~~
- (11) Provide continuing supervision and control of persons ordered to be placed on pretrial supervision by the court and persons ordered by the director."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved June 20, 2012.)

ACT 142

H.B. NO. 2601

A Bill for an Act Relating to the Service of Process.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 603-29, Hawaii Revised Statutes, is amended to read as follows:

"§603-29 Order to show cause. Whenever a complaint has been filed in circuit court alleging leased or rented personal property the value of which is \$5,000 or more, has been retained by the defendant fourteen days after the termination of the lease or rental contract, either by passage of time or by reason

of any default under the terms and conditions of the lease or rental contract, the plaintiff may petition the court for an order to show cause.

Upon the filing of the petition with a copy of the lease or rental contract and an affidavit sworn to by the plaintiff or some competent affiant setting forth a statement of facts sufficient to show the termination of the lease or rental contract, the court may issue an order directing the defendant to either return the leased or rented personal property to the plaintiff or to appear and show cause for the possession at such time as the court shall direct but not later than ten days from the date of service of the order to show cause. The order to show cause shall also provide that if the leased or rented personal property is not returned to the plaintiff prior to the hearing, the defendant shall, if reasonably feasible, produce the property at the hearing. If, at the hearing, it is proved to the satisfaction of the court that the plaintiff is entitled to possession of the leased or rented personal property, it shall issue an order directed to the sheriff, ~~[or the sheriff's]~~ deputy~~;~~ sheriff, or person authorized by the rules of court, commanding the sheriff ~~[or]~~, deputy sheriff, or other person authorized by the rules of court to seize the personal property therein described and to deliver the same to the plaintiff or the plaintiff's agent. Service of the order to show cause shall be as provided by law or rule of court for cases in the circuit courts, or by registered mail or by certified mail with return receipt showing delivery within the circuit."

SECTION 2. Section 604-6.2, Hawaii Revised Statutes, is amended to read as follows:

"§604-6.2 Order to show cause. Upon the filing of a complaint with a copy of a lease or rental contract and an affidavit sworn to by the plaintiff or some competent affiant setting forth a statement of facts sufficient to show that the leased or rented personal property has been in the defendant's possession at least fourteen days after the termination of the lease or rental contract, either by passage of time or by reason of any default under the terms and conditions of the lease or rental contract, the court may issue an order directing the defendant to either return the leased or rented personal property to the plaintiff or to appear and show cause for the possession at such time as the court shall direct, but not later than ten days from the date of service of the order to show cause. The order to show cause shall also provide that, if the leased or rented personal property is not returned to the plaintiff prior to the hearing, the defendant shall, if reasonably feasible, produce the property at the hearing. If, at the hearing, it is proved to the satisfaction of the court that the plaintiff is entitled to possession of the leased or rented personal property, it shall issue an order directed to the sheriff, ~~[or the sheriff's]~~ deputy~~;~~ sheriff, or other person authorized by the rules of court commanding the sheriff ~~[or]~~, deputy sheriff, or a person authorized by the rules of court to seize the personal property therein described and to deliver the same to the plaintiff or the plaintiff's agent. Service of the order to show cause shall be as provided by law or rule of court for cases in the district courts, or by registered mail or by certified mail with return receipt showing delivery within the State."

SECTION 3. Section 607-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) ~~[Sheriff's or] Fees of sheriff, deputy sheriff, police [officer's fees:] officer, or other person authorized by the rules of court:~~

- (1) For serving any criminal summons, warrant, attachment, or other criminal process, \$30 effective July 1, 2001. This fee is payable to

a sheriff, deputy sheriff, or police officer. Service of criminal summons, warrant, attachment, or other criminal process shall be made only by persons authorized to serve criminal summons in accordance with rules of court.

- (2) For serving any civil summons, warrant, attachment, or other civil process, \$25 effective July 1, 2001.
- (3) For every copy of an attachment and inventory of the property attached, served upon the defendant, \$2.
- (4) For serving any execution, 12 cents for every \$1 collected up to \$500, and 7 cents for every \$1 over \$500.
- (5) For serving: subpoena, \$25; and subpoena duces tecum or garnish-ee summons, \$15 effective July 1, 2001.
- (6) For every mile of travel, more than one, in serving any process, 40 cents; provided that:
 - (A) ~~[no]~~ No allowance shall be made where the serving ~~[officer]~~ individual uses a conveyance furnished the serving ~~[officer]~~ individual by the State, or any political or municipal subdivision thereof;
 - (B) ~~[where]~~ Where the serving ~~[officer]~~ individual serves more than one person in the course of one trip, the serving ~~[officer]~~ individual shall not charge, in the aggregate for all services, more than the mileage for the entire trip; and
 - (C) ~~[as]~~ As far as practicable, in order to minimize the mileage fees for the service, the sheriff or other chief of the serving officers, or other person authorized by the rules of court, where service of process is to be made upon an island other than that upon which is situated the court issuing the process, shall cause the process to be transmitted to ~~[a]~~ the sheriff, deputy[,] sheriff, the chief of police, a person authorized by the rules of court, or other serving ~~[officer]~~ individual upon the island of service, who shall make the service upon receipt of the process; and the service shall be valid, notwithstanding that the process may not be addressed to the ~~[officer]~~ individual actually making the service or to the ~~[officer's]~~ individual's superior.

In lieu of any fee under this subsection, the fee may be an hourly rate of not less than \$50 per hour agreed upon in advance between the party requesting the service and the sheriff ~~[or]~~ deputy sheriff, police officer, or other person authorized by the rules of court performing the service.”

SECTION 4. Section 607-8, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“§607-8 [Sheriff’s or] Fees of sheriff, serving or levying [officer’s fees] officer, or other person authorized by the rules of court in circuit court, intermediate appellate court, or supreme court. (a) For all necessary travel in making the service, per mile for every mile more than one...40 cents provided that:

- (1) No allowance shall be made where the serving ~~[officer]~~ individual uses a conveyance furnished the serving ~~[officer]~~ individual by the State, or any political or municipal subdivision thereof;
- (2) Where the serving ~~[officer]~~ individual serves more than one person in the course of one trip, the serving ~~[officer]~~ individual shall not charge, in the aggregate for all services more than the mileage for the entire trip; and

- (3) As far as practicable, in order to minimize the mileage fees for the service, the sheriff or other chief of the serving officers, or other person authorized by the rules of court where service of process is to be made upon an island other than that upon which is situated the court issuing the process, shall cause the process to be transmitted to [a] the sheriff, deputy[-] sheriff, the chief of police, other person authorized by the rules of court, or other serving [officer] individual upon the island of service who shall make the service upon receipt of the process; and the service shall be valid, notwithstanding that the process may not be addressed to the [officer] individual actually making the service or to the [officer's] individual's superior.

For serving criminal summons or any other criminal process except a subpoena, for each person served therewith \$30 effective July 1, 2001. Service of criminal summons or any other criminal process shall be made only by persons authorized to serve criminal summons in accordance with rules of court.

For serving civil summons or any other civil process, except a subpoena or a garnishee summons, for each person served therewith \$25 effective July 1, 2001.

For serving: subpoena, for each person, \$25; and subpoena duces tecum or garnishee summons, for each person \$15 effective July 1, 2001.

For returning as unserved after due and diligent search any process when it has been found that the person to be served has left the State \$5 effective July 1, 2001.

For serving any execution or other process for the collection of money, for every dollar collected up to \$1,000 5 cents.

And for every dollar over \$1,000 2-1/2 cents.

All fees paid to any printer for publishing an advertisement of the sale of any property.

For every bill of sale \$2.

For executing and acknowledging a deed pursuant to a sale of real estate to be paid by the grantee in the deed \$8.

For drawing any bond required by law \$2.

For serving writ of possession or restitution, putting any person entitled into the possession of premises, and removing a tenant pursuant to order of court \$25.

Together with all necessary expenses incurred by the [officer] individual serving the writ, incident to the eviction.

For selling any property on an order from the court other than an execution, the same allowance as for service and sales by execution.

The fees for service of executions, attachments, and collection of judgments, together with all costs incurred after judgment rendered, not included in the judgment, in all courts of the State, shall be collected in addition to the sum directed to be levied and collected in the writ.

In lieu of any fee under this subsection, the fee may be an hourly rate of not less than \$50 per hour agreed upon in advance between the party requesting the service and the sheriff ~~[or]~~, deputy sheriff, police officer, or other person authorized by the rules of court performing the service."

SECTION 5. Section 633-8, Hawaii Revised Statutes, is amended to read as follows:

"§633-8 Order to show cause. Upon the filing of a complaint with a copy of a lease or rental contract and an affidavit sworn to by the plaintiff or

some competent affiant setting forth a statement of facts sufficient to show that the leased or rented personal property has been in the defendant's possession at least fourteen days after the termination of the lease or rental contract, either by passage of time or by reason of any default under the terms and conditions of the lease or rental contract, the court may issue an order directing the defendant to either return the leased or rented personal property to the plaintiff or to appear and show cause for the possession at such time as the court shall direct, but not later than five days from the date of service of the order to show cause. The order to show cause shall also provide that, if the leased or rented personal property is not returned to the plaintiff prior to the hearing, the defendant shall, if reasonably feasible, produce the property at the hearing. If, at the hearing, it is proved to the satisfaction of the court that the plaintiff is entitled to possession of the leased or rented personal property, it shall issue an order directed to the sheriff, ~~[or the sheriff's]~~ deputy~~;~~ sheriff, or other person authorized by the rules of court commanding the sheriff ~~[or the sheriff's]~~, deputy sheriff, or other person authorized by the rules of court to seize the personal property therein described and to deliver the same to the plaintiff or the plaintiff's agent. Service of the order to show cause shall be as provided by law or rule of court for cases in the district courts, or by registered mail or by certified mail with return receipt showing delivery within the circuit."

SECTION 6. Section 634-11, Hawaii Revised Statutes, is amended to read as follows:

"§634-11 Interpleader; ~~[sheriff's]~~ application for order~~[-]~~ by sheriff or other person authorized by the rules of court. When, in the execution of process against goods and chattels issued by or under the authority of the courts of the State, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process had issued, whereby the ~~[sheriffs and]~~ sheriff, deputy sheriffs, other officers, or persons authorized by the rules of court are exposed to the hazard and expense of actions, any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process or to the proceeds or value thereof, it shall be lawful for the court, out of which the execution shall have issued, or any judge thereof, upon application of the sheriff ~~[or]~~, deputy sheriff, other officer, or other person authorized by the rules of court, made before or after the return of such process, and as well before as after any action brought against the sheriff ~~[or]~~, deputy sheriff, other officer, or other person authorized by the rules of court, to call before it or the judge by rule, order, or summons, as well the party issuing such process as the party making the claim. Thereupon the court or judge shall, for the adjustment of the claims and the relief and protection of the sheriff ~~[or]~~, deputy sheriff, other officer, or other person authorized by the rules of court, make such rules, orders, and decisions as shall appear to be just according to the circumstances of the case. The costs of all such proceedings shall be in the discretion of the court or judge."

SECTION 7. Section 634-12, Hawaii Revised Statutes, is amended to read as follows:

"§634-12 Sale of property seized on execution, when. When goods or chattels have been seized in execution by the sheriff ~~[or]~~, deputy sheriff, other officer, or other person authorized by the rules of court, under process of any court, and some third person claims to be entitled under a bill of sale, chattel mortgage, or otherwise, to the goods and chattels by way of security for a debt,

the court or a judge may order a sale of the whole or part thereof, upon such terms as to the payment of the whole or part of the secured debt or otherwise as it or the judge shall think fit; and may direct the application of the proceeds of sale in such manner and upon such terms as to the court or judge may seem just.”

SECTION 8. Section 634-22, Hawaii Revised Statutes, is amended to read as follows:

“§634-22 Return. In all cases where any process or order of a court is served by any officer of the court or of the police force or the sheriff ~~[or the sheriff’s deputies]~~, deputy sheriff, or any investigator appointed and commissioned by the director of commerce and consumer affairs pursuant to section 26-9(j), a record thereof shall be endorsed upon the back of the process, complaint, order, or citation. The record shall state the name of the person served and the time and place of service and shall be signed by the officer making the service. If the officer fails to make service the officer, in like manner, shall endorse the reason for the officer’s failure and sign this record. When service is made by a person specially appointed by the court, or a person authorized by the rules of court, the person shall make affidavit of that service.

The record or the affidavit shall be prima facie evidence of all it contains, and no further proof thereof shall be required unless either party desires to examine the officer or person making service, in which case the officer or person shall be notified to appear for examination.”

SECTION 9. Section 651-1, Hawaii Revised Statutes, is amended to read as follows:

“§651-1 General provisions. This ~~[part]~~ chapter shall apply to circuit and district courts. A judge of any court of record may make any order at chambers which may by the provisions of this ~~[part]~~ chapter be made by the court in term time. When the proceedings are before a district judge, the judge shall be regarded as the clerk of the court for all purposes contemplated herein. The phrase “police officer”, as used in this ~~[part,]~~ chapter, means the director of public safety or the director’s duly authorized representative, any chief of police or subordinate police officer, or a person authorized by the rules of court. Nothing in this ~~[part]~~ chapter shall be construed to permit a district judge to issue a writ of attachment to be served out of the circuit in which the judge’s court is situated, or to permit an attachment of real estate, or any interest therein, under a writ issued by a district court judge.”

SECTION 10. Section 666-11, Hawaii Revised Statutes, is amended to read as follows:

“§666-11 Judgment; writ of possession. If it is proved to the satisfaction of the court that the plaintiff is entitled to the possession of the premises, the plaintiff shall have judgment for possession, and for the plaintiff’s costs. Execution shall issue accordingly. The writ of possession shall issue to the sheriff ~~[or to a]~~, deputy sheriff, police officer, or other person authorized by the rules of court of the circuit where the premises are situated, commanding the sheriff ~~[or]~~, deputy sheriff, police officer, or other person authorized by the rules of court to remove all persons from the premises, and to put the plaintiff, or the plaintiff’s agent, into the full possession thereof.”

ACT 143

SECTION 11. Section 666-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the tenant is unable to comply with the court’s order under subsection (a) in paying the required amount of rent to the court, the landlord shall have judgment for possession and execution shall issue accordingly. The writ of possession shall issue to the sheriff ~~[or to a]~~, deputy sheriff, police officer, or other person authorized by the rules of court of the circuit where the premises are situated, ordering the sheriff ~~[or]~~, deputy sheriff, police officer, or other person authorized by the rules of court to remove all persons and possessions from the premises, and to put the landlord, or the landlord’s agent, into full possession of the premises.”

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 20, 2012.)

ACT 143

S.B. NO. 2056

A Bill for an Act Relating to the Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 706-623, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) When the court has sentenced a defendant to be placed on probation, the period of probation shall be as follows, unless the court enters the reason therefor on the record and sentences the defendant to a shorter period of probation:

- (a) Ten years upon conviction of a class A felony;
- (b) Five years upon conviction of a class B or class C felony;
- (c) One year upon conviction of a misdemeanor; except that upon a conviction under section 586-4, 586-11, or 709-906, the court may sentence the defendant to a period of probation not exceeding two years; or
- (d) Six months upon conviction of a petty misdemeanor; provided that up to one year may be imposed upon a finding of good cause.

The court, on application of a probation officer, on application of the defendant, or on its own motion, may discharge the defendant at any time. Prior to the court granting early discharge, the defendant’s probation officer shall be required to report to the court concerning the defendant’s compliance or non-compliance with the conditions of probation and the court shall afford the prosecuting attorney an opportunity to be heard. The terms of probation provided in this part, other than in this section, shall not apply to sentences of probation imposed under section 706-606.3.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved June 20, 2012.)

ACT 144

S.B. NO. 3001

A Bill for an Act Relating to Wildlife.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to prohibit the interisland transportation of wild or feral deer.

SECTION 2. Chapter 183D, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

“§183D- Interisland transportation and possession of wild or feral deer prohibited. No person shall intentionally, knowingly, or recklessly possess, transfer, transport, or release after transport through interisland movement any live wild or feral deer unless permitted by the department or other department of the State.”

SECTION 3. Section 183D-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:
““Feral deer” means a deer that has escaped or been released from domestication and is living in a wild and unconfined state.

“Possess” means to place under direct physical control, restraint, or confinement.

“Release” means to free an animal from effective confinement or restraint.”

SECTION 4. Section 183D-5, Hawaii Revised Statutes, is amended to read as follows:

“§183D-5 Penalties. (a) Any person violating section 183D-21, 183D-25, 183D-33, or 183D-63 or any rule adopted under this chapter shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be punished as follows:

- (1) For a first conviction, by a mandatory fine of not less than \$100, or imprisonment of not more than thirty days, or both;
- (2) For a second conviction within five years of a previous conviction, by a mandatory fine of not less than \$500, or by imprisonment of not more than thirty days, or both, and all firearms used in the commission of ~~[such]~~ the violations shall be considered contraband to be forfeited to and disposed of by the State; and
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a mandatory fine of not less than \$1,000, or by imprisonment of not more than thirty days, or both, and all firearms used in the commission of ~~[such]~~ the violations shall be considered contraband to be forfeited to and disposed of by the State.

(b) Any person violating section 183D-25.5, 183D-26, 183D-27, 183D-32, 183D-62, or 183D-64 shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as follows:

- (1) For a first conviction by a mandatory fine of not less than \$200, or by imprisonment of not more than one year, or both;
- (2) For a second conviction within five years of a previous conviction, by a mandatory fine of not less than \$1,000, or by imprisonment of not more than one year, or both, and all firearms used in the commission of ~~[such]~~ the violations shall be considered contraband to be forfeited to and disposed of by the State; and

- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a mandatory fine of not less than \$2,000, or by imprisonment of not more than one year, or both, and all firearms used in the commission of ~~[such]~~ the violations shall be considered contraband to be forfeited to and disposed of by the State.

(c) Any person who violates section 183D- shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as follows:

- (1) For a first conviction, by a mandatory fine of not less than \$10,000 and payment of any costs incurred in the eradication of any deer and the deer's progeny that has been possessed, transferred, transported, or released after transport, or by imprisonment of not more than one year, or both;
- (2) For a second conviction within five years of a previous conviction, by a mandatory fine of not less than \$15,000 and payment of any costs incurred in the eradication of any deer and the deer's progeny that has been possessed, transferred, transported, or released after transport, or by imprisonment of not more than one year, or both; and
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a mandatory fine of not less than \$25,000 and payment of any costs incurred in the eradication of any deer and the deer's progeny that has been possessed, transferred, transported, or released after transport, or by imprisonment of not more than one year, or both.

~~[(e)]~~ (d) Any person who violates section 183D-35, 183D-36, 183D-37, 183D-38, 183D-39, 183D-40, or 183D-42 shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be fined not less than \$100 or imprisoned not more than thirty days, or both.

~~[(d)]~~ (e) In addition to any other penalty imposed under this section, a mandatory fine of \$100 shall be levied for each bird illegally taken under this chapter and a mandatory fine of \$500 shall be levied for each mammal illegally taken under this chapter.

~~[(e)]~~ (f) Any person who is convicted of violating any of the game laws of the State shall immediately have ~~[their]~~ the person's hunting license forfeited and any person convicted for a second offense shall not be granted a license to hunt for a period of three years after the date of the second conviction.

~~[(f)]~~ (g) The court, in lieu of the actual cash payment of any mandatory fine, may allow the defendant to perform ~~[such]~~ the community service as directed by the department of land and natural resources at the rate of one hour of service for every \$10 of mandatory fine imposed.

~~[(g)]~~ (h) Any criminal action against a person for any violation of this chapter shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of subtitle 4 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved June 21, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 145

S.B. NO. 2277

A Bill for an Act Relating to Endangered and Threatened Species.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 195D-27, Hawaii Revised Statutes, is repealed.

SECTION 2. Act 380, Session Laws of Hawaii 1997, as amended by Act 3, Session Laws of Hawaii 2001, as amended by Act 90, Session Laws of Hawaii 2006, is amended by amending section 13 to read as follows:

“SECTION 13. This Act shall take effect upon its approval; provided that no new safe harbor agreements, habitat conservation plans, or incidental take licenses issued pursuant to section 195D-4, 195D-21, or 195D-22, Hawaii Revised Statutes, shall be approved or issued ~~[subsequent to]~~ on or after [July 1, 2012;] June 30, 2017.”

SECTION 3. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 2 of this Act shall take effect on June 30, 2012.

(Approved June 21, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 146

H.B. NO. 2589

A Bill for an Act Relating to Vessels.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 200-41, Hawaii Revised Statutes, is amended to read as follows:

~~“[§200-41]~~ **Disposition ~~[by chairperson]~~ of certain abandoned vessels.**

(a) Any vessel ~~[which:~~

- (1) ~~Has been left unattended for a continuous period of more than thirty days; and~~
- (2) ~~Is within the waters of the State or on public property, or is on private property without authorization of the owner or occupant of the property;~~

~~may be caused by the chairperson to be taken into custody and disposed of pursuant to this part.]~~ may be deemed abandoned if the vessel has been moored or otherwise left in the waters of the State or on public property contrary to law or rules having the force and effect of law, or left on private property without authorization of the owner or occupant of the property if:

- (1) The vessel's registration certificate or marine document has expired and the registered owner no longer resides at the address listed in the vessel registration or marine document records of the department or the United States Coast Guard;

- (2) The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;
- (3) The vessel identification numbers and other means of identification have been removed so as to hinder or nullify efforts to locate or identify the owner;
- (4) The vessel registration records of the department of land and natural resources and the marine document records of the United States Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined; or
- (5) The requirements of section 200-52 are met.
- (b) The determination whether a vessel is abandoned on public property may be made by:
 - (1) The chairperson, with regard to public property under the jurisdiction of the department of land and natural resources; or
 - (2) Any other state department or agency through its director, with regard to public property within the department or agency's respective jurisdiction; or
 - (3) Any county through its mayor or the mayor's designee, or chief of police, with regard to public property within the respective county's jurisdiction; provided that the department shall provide to the respective county access to the department's vessel registration and marine document records or those of the United States Coast Guard for the purposes of this section.

Once a vessel is deemed abandoned, the appropriate official under this subsection may direct and cause the vessel to be taken into custody and disposed of pursuant to and in the manner provided in this chapter.

(c) All vessels abandoned on private property shall be the responsibility of the private property owner."

SECTION 2. Section 200-42, Hawaii Revised Statutes, is amended to read as follows:

"§200-42 Notice to owner. [Upon] A state or county agency, upon taking custody of any vessel, [a written notice] shall immediately [be posted] post a written notice on the vessel and send a duplicate original [sent] by registered or certified mail, with a return receipt requested, to [the] any owner registered with the department or documented by the United States Coast Guard or any lien holder or operator of the vessel on record with the department or the United States Coast Guard at their respective last known address on record with the department or the United States Coast Guard. The notice shall contain a brief description of the vessel, the location of custody, and the intended disposition of the vessel if not repossessed within twenty days after the mailing of the notice. Such owner, lien holder, or operator, of the vessel shall have ten days after receipt of the mailed notice to request in writing an administrative hearing[-] pursuant to chapter 91 from the state or county agency that took custody of the vessel. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given [by the department] for the impoundment of the vessel. The hearing [must] shall be held within five working days of the [department's] state or county agency's receipt of the written request."

SECTION 3. Section 200-44, Hawaii Revised Statutes, is amended to read as follows:

“§200-44 Possession by interested party. Any person having an interest in the vessel taken into custody may take possession of the vessel prior to the date of public auction upon payment to the ~~[department]~~ state or county agency that took custody of the vessel of all use fees, towing, handling and storage charges, appraisal and advertising expenses, and any other expenses incurred by ~~[the department]~~ that state or county agency in connection with the vessel. If the person taking possession of the vessel is not the registered or documented owner, the person, prior to taking possession of the vessel, shall pay the foregoing expenses and post security satisfactory to the ~~[department]~~ state or county agency, which shall not exceed the value of the vessel. The security, if not forfeited, shall be returned to the person posting it within two years after receipt.”

SECTION 4. Section 200-45, Hawaii Revised Statutes, is amended to read as follows:

“§200-45 When public auction not required. Public auction shall not be required when the appraised value of any vessel is less than \$5,000, as determined by an independent appraiser who has at least one year of experience in the sale or purchase of vessels. Upon that determination, after public notice of intended disposition has been given at least once, the ~~[department]~~ state or county agency that took custody of the vessel may sell the vessel by negotiation, dispose of it as junk, or donate the vessel to any governmental agency.”

SECTION 5. Section 200-46, Hawaii Revised Statutes, is amended to read as follows:

“[§200-46] Effect of sale. The transfer of interest by sale hereunder shall be evidenced by a bill of sale from the ~~[department,]~~ appropriate state or county agency, shall be considered a transfer by operation of law, and shall be governed by provisions applicable thereto.”

SECTION 6. Section 200-47, Hawaii Revised Statutes, is amended to read as follows:

“§200-47 Disposition of proceeds. ~~[The department]~~ A state or county agency that sells a vessel pursuant to this part shall deposit that portion of the proceeds of the sale of ~~[a]~~ the vessel that represents the mooring or other fees and charges due the ~~[department,]~~ agency, the expenses of the auction, and any other expense incurred by the ~~[department]~~ agency in taking into custody and disposing of an abandoned vessel, derelict vessel, or vessel impounded under section 200-16, into the boating special fund or other state or county fund, as appropriate, from which the expenses incurred in connection with the vessel were paid. The balance, if any, shall be deposited into the general fund of the State. The owner may recover any balance of the proceeds from the State only if the owner files a claim therefor with the department of budget and finance within one year after the execution of the bill of sale. If no claim is made within the year allowed, the money shall become a state realization. A lien holder shall receive priority in payment from the balance of the proceeds to the extent of the lien holder's lien on the vessel. If the proceeds of the sale are insufficient to cover the mooring and other fees and charges, the expenses of the auction, and the other expenses incurred by the ~~[department]~~ agency in taking into custody and disposing of the vessel, the ~~[department]~~ agency may bring an action for the deficiency in a court of appropriate jurisdiction against the registered or docu-

mented owner or any person who had an interest in the vessel when custody was taken by the [department] agency.”

SECTION 7. Chapter 200, Hawaii Revised Statutes, is amended by amending the title of part IV to read as follows:

**“PART IV. VESSELS ABANDONED ON [BUSINESS] PREMISES
OF PERSONS ENGAGED IN REPAIR BUSINESS,
PRIVATE MARINAS, [AND] YACHT CLUBS,
OR ON OTHER PRIVATE PROPERTY”**

SECTION 8. Section 200-51, Hawaii Revised Statutes, is amended to read as follows:

“§200-51 Disposition of vessels [by persons in] abandoned on the premises of a vessel repair business, private [marinas, or] marina, yacht [clubs,] club, or other private property. When any person abandons a vessel upon the premises of a vessel repair business, a private marina, [or] a yacht club, or other private property, the owner of the vessel repair business or private marina, or the owner’s representative[; or]; the designated representative of the yacht club[;]; or the owner of other private property, may sell or dispose of the vessel in [accord] accordance with this part.”

SECTION 9. Section 200-52, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“§200-52 When vessel deemed abandoned[;] on the premises of a vessel repair business, private marina, or yacht club.”

SECTION 10. Section 200-53, Hawaii Revised Statutes, is amended to read as follows:

“§200-53 Sale or disposition of vessel. When a vessel is abandoned, the owner of the vessel repair business[;] or private marina, or the owner’s authorized representative[; or]; the designated representative of the yacht club[;]; or the owner of other private property, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vessel or dispose of it; provided that the vessel shall not be sold or disposed of less than five calendar days after the publication of the advertisement. Upon the sale or disposal of the vessel under this part, the owner of the vessel repair business[;] or private marina, or the owner’s authorized representative[; or]; the designated representative of the yacht club[;]; or the owner of other private property, shall file an affidavit with the department stating to whom the vessel was sold or, if the vessel was not sold, the manner in which the vessel was disposed of pursuant to this part.”

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2012; provided that county responsibility under this Act for each county shall commence:

- (1) Upon a county’s access to vessel registration and marine document records of the department of land and natural resources or the

United States Coast Guard as required in section 200-41, Hawaii Revised Statutes, in section 1 of this Act; or

(2) On January 1, 2013;
whichever is earlier.

(Approved June 21, 2012.)

ACT 147

H.B. NO. 2595

A Bill for an Act Relating to Special Purpose Revenue Bonds to Assist Dam and Reservoir Owners.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 39A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . ASSISTING DAM AND RESERVOIR OWNERS

§39A-A Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

"Appurtenant works" shall have the same meaning in this part as it has in section 179D-3.

"Dam" shall have the same meaning in this part as it has in section 179D-3.

"Department" means the department of budget and finance.

"Owner" means any person subject to chapter 179D who has a right, title, or interest in or to the dam or reservoir or to the property upon which the dam, reservoir, or appurtenant works are located or proposed to be located.

"Person" or "persons" means an individual, firm, enterprise, partnership, corporation, association, cooperative or other legal entity, governmental body or agency, board, bureau or other instrumentality thereof, or any combination of the foregoing.

"Project" means any work on a dam, reservoir, or appurtenant works necessary to maintain or improve the dam, reservoir, or appurtenant works.

"Project agreement" means any agreement entered into under this part by the department with a project party to finance, construct, operate, or maintain a project from the proceeds of special purpose revenue bonds, or to lend the proceeds of special purpose revenue bonds to assist dam and reservoir owners, including without limitation any loan agreement.

"Project party" means a person or persons who are dam and reservoir owners.

"Reservoir" shall have the same meaning in this part as it has in section 179D-3.

"Special purpose revenue bonds" or "bonds" means bonds, notes, or other evidences of indebtedness of the State issued pursuant to this part.

§39A-B Department powers as to dam and reservoir owners. In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department shall include the following:

(1) Notwithstanding and without compliance with section 103-7, but with the approval of the governor, to:

- (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
- (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, maintenance of a project, or refinancing of outstanding obligations related to a project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement previously approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.

§39A-C Compliance with state and local law. The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of the project from the laws, ordinances, and rules of the State or any political subdivision thereof, or any departments or boards thereof with respect to:

- (1) The construction, operation, and maintenance of projects;
- (2) Compliance with zoning laws or regulations;
- (3) Obtaining of building permits; and
- (4) Compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project.

These laws shall be applicable to the party or any other user to the same extent they would be if the costs of the project were directly financed by the project party.

§39A-D Conditions precedent to negotiating and entering into a project agreement. (a) Prior to entering into negotiations with respect to a project agreement or at any time during the negotiations, the department shall require that as a condition to the negotiations or the continuation thereof, the State shall be reimbursed for any and all costs and expenses incurred by it even though a project agreement may not be entered into. The department may further require the deposit of moneys with the department as security for the reimbursement. Any amount of the deposit in excess of the amount required to reimburse the State shall be returned by the department to the party that has made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

(b) The department shall not enter into any project agreement with respect to any project unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance the project pursuant to section 39A-G and the department has thereafter found and determined either that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise.

§39A-E Project agreement. No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing of which the special purpose revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, the sum or sums, at time or times, and in amounts that will be at least sufficient:
 - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as and when the same become due, including any premium payable upon any required redemption of the bonds;
 - (B) To establish or maintain a reserve, if any, that may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) To pay all fees and expenses, including the fees and expenses of the paying agents and trustees, incurred in connection with the special purpose revenue bonds; and
 - (D) To pay the expenses, direct or indirect, incurred by the State, as determined by the department, in administering the bonds or in carrying out the project agreement; and

- (2) To operate, maintain, and repair the project as long as it is used, as provided in the project agreement, and to pay all costs of the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, or be deemed to be, revenues of the project and shall be paid into the general fund of the State.

§39A-F Issuance of special purpose revenue bonds to finance projects. In addition to the other powers that it may otherwise have, the department may issue special purpose revenue bonds to finance or refinance, in whole or in part, the costs of facilities of, or for, or to loan the proceeds of the bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

In determining the cost of any project, the department may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of the project;
- (2) Interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed from the proceeds of the bonds accruing or incurred prior to and during the estimated period of construction and for the period not exceeding twelve months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicality of the project;
- (6) Administrative expenses;
- (7) Legal, accounting, consulting, and other special service fees;
- (8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and
- (9) Other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, maintenance, or extension of the project, the financing or refinancing thereof, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of the bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to dam and reservoir owners and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of the bonds to assist project parties is in the public interest.

§39A-G Authorization of special purpose revenue bonds. (a) Special purpose revenue bonds for each project or multi-project program shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of the bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any special purpose revenue bond authorization, or any portion of the special

purpose revenue bond authorization that has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at a rate or rates, shall mature at a time or times not exceeding forty years from their date or dates, shall have a rank or priority and may be made redeemable before maturity at the option of the department, at a price or prices and under terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest that may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine. Provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds either at public or private sale and for a price that it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of the mutilated bond or coupon, or in lieu of and in substitution for a lost, stolen, or destroyed bond or coupon. The new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has:

- (1) Paid the reasonable expense and related charges;
- (2) In the case of a lost, stolen, or destroyed bond or coupon, filed with the department or its fiduciary evidence satisfactory to the department or its fiduciary that the bond or coupon was lost, stolen, or destroyed and that the holder was the owner of the bond; and
- (3) Furnished indemnity satisfactory to the department.

(d) The department may provide that CUSIP identification numbers be printed on the special purpose revenue bonds. If numbers are imprinted on the bonds:

- (1) No CUSIP identification number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted; and
- (2) No liability shall attach to the department or any of its officers or agents, including any fiscal agent, paying agent, or registrar for the bonds, by reason of the numbers or any use made thereof, including any use made by the department, any officer, or any agent, or by reason of any inaccuracy, error, or omission with respect thereto or in any use.

The department may require that all costs of obtaining and imprinting the numbers shall be paid by the purchaser of the bonds. For the purpose of this subsection, the term "CUSIP identification numbers" means the numbering sys-

tem adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

§39A-H Special purpose revenue bond anticipation notes. Whenever the department has authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of the bonds and of the receipt of the proceeds of sale of the bonds, for the purposes for which the bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of the notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which the bonds would be secured; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of the bonds, the maximum amount of bonds in anticipation of which the notes are issued that has been authorized shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and the details of the notes shall be governed by this part with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note.

§39A-I Powers with respect to and security for special purpose revenue bonds. To secure the payment of any of the special purpose revenue bonds issued pursuant to this part and interest thereon, or in connection with the bonds, the department shall have the power:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed from proceeds thereof and interest thereon, and to covenant against thereafter pledging any revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon the revenues;
- (2) To pledge and assign the interest and right of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder;
- (3) To covenant as to the use and disposition of the proceeds from the sale of the bonds;
- (4) To covenant to set aside or pay over reserves and sinking funds for the bonds and as to the disposition thereof;
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;
- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;
- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as

trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with the trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which the bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply the revenues to the payment of the principal and interest on the bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering the bonds or in carrying out the project agreement. If a trustee is appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable to secure the bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds. The department may also authorize and empower the trustee to perform these functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation the holding of the special purpose revenue bonds and coupons that have been paid and the supervision of the destruction thereof in accordance with law;

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties; and
- (9) To make covenants and do any and all acts as may be necessary, convenient, or desirable to secure the bonds, notwithstanding that the covenants, acts, or items may not be enumerated herein.

The department shall have the power to do all things in the issuance of the bonds and for their security that are consistent with the Constitution of the State of Hawaii.

§39A-J Security for special purpose revenue bonds. Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other supplemental agreements entered into with respect to the project and shall be secured solely by the bond revenues and by the pledges and assignments authorized by this part. Subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, all special purpose revenue bonds of the same issue shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the project, for which the bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable from the revenues that may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the department may reserve the right and privilege to subsequently issue additional series of special purpose revenue bonds, from time to time, payable from the revenues

derived from the project agreement on a parity with the special purpose revenue bonds previously issued, and the subsequently issued series of special purpose revenue bonds may be secured, without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this part.

Notwithstanding any other provisions herein, all or part of the property constituting the project and all interest of the project party in the project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds, and the rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage.

§39A-K Special purpose revenue bonds not a general obligation of the State. No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of the taxing power of the State to pay the bonds or the interest thereon and no moneys other than the revenues pledged to the bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this part shall recite in substance that the bond, including interest thereon, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that the bond is not secured, directly or indirectly, by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the revenues specifically pledged thereto.

§39A-L Validity of special purpose revenue bonds. The special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor, any or all the persons whose signatures appear thereon shall have ceased to be officers of the department. Special purpose revenue bonds shall contain a recital that they are issued pursuant to this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

§39A-M Use of revenues derived from project agreement. The department shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premiums if any, and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefor; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operations, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State.

§39A-N Special purpose revenue bonds exempt from taxation. Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state and county taxation except inheritance, transfer, and estate taxes.

§39A-O Federal tax exempt status. To the extent practicable, special purpose revenue bonds issued pursuant to this part shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes, except as certain minimum taxes or environmental taxes may apply. The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes.

§39A-P Exemption from taxation of department property. All revenues derived by the department from any project or under the project agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the department in any project shall also be exempt from all state and county taxation.

Except as otherwise provided by law, the interest of the project party or user of the project under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by the project party or other user.

§39A-Q Refunding special purpose revenue bonds. By act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, the legislature may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption. By act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, the legislature may provide for the issuance of a single issue of special purpose revenue bonds for the combined purposes of:

- (1) Financing or refinancing the cost of a project or improvement or expansion thereof; and
- (2) Refunding special purpose revenue bonds that shall theretofore have been issued under this part and shall then be outstanding, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption.

Nothing in this section shall require or be deemed to require the department to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded that were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any instruments providing for the issuance thereof, or, if the department elects to redeem or prepay any bonds, to redeem or prepay as of any particular date or dates. The issuance of refunding special purpose revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable.

§39A-R Status of special purpose revenue bonds under the Uniform Commercial Code. Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration.

§39A-S Special purpose revenue bonds as legal investments and lawful security. Special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. The special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and the bonds shall be lawful and sufficient security for public fund deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto.

§39A-T Access to and public disclosure of financial records of project party. (a) Each project party with a project agreement with the department shall allow the department full access to the project party's financial records. Upon the request of the department for the examination of any financial record, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records that pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purposes of this section.

§39A-U Estimate of benefits. (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on the creation of new jobs and potential effect on tax receipts. The format of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing benefits to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section.

§39A-V Construction of this part. The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall control."

SECTION 2. In codifying the new part added to chapter 39A, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

SECTION 3. This Act shall take effect on July 1, 2012, and upon ratification of constitutional amendments authorizing the State to issue special purpose

revenue bonds and use the proceeds from the bonds to assist dam and reservoir owners.

(Approved June 21, 2012.)

ACT 148

H.B. NO. 2681

A Bill for an Act Relating to Electric Guns.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 134-16, Hawaii Revised Statutes, is amended to read as follows:

“§134-16 Restriction on possession, sale, gift, or delivery of electric guns.

(a) It shall be unlawful for any person, including a licensed manufacturer, licensed importer, or licensed dealer, to possess, offer for sale, hold for sale, sell, give, lend, or deliver any electric gun.

(b) Any electric gun possessed, offered for sale, held for sale, sold, given, lent, or delivered in violation of subsection (a) shall be confiscated and disposed of by the chief of police.

(c) This section shall not apply to:

- (1) Law enforcement officers of county police departments;
- (2) Law enforcement officers of the department of public safety;
- (3) Conservation and resources enforcement officers of the department of land and natural resources;
- (4) Members of the army or air national guard when assisting civil authorities in disaster relief, civil defense, or law enforcement functions, subject to the requirements of section 121-34.5; and
- (5) Vendors providing electric guns to the individuals described in paragraphs (1) through (4);

provided that electric guns shall at all times remain in the custody and control of the law enforcement officers of the county police departments, the law enforcement officers of the department of public safety, the conservation and resources enforcement officers of the department of land and natural resources, or the members of the army or air national guard.

(d) The county police departments of this State, the department of public safety, the department of land and natural resources, and the army and air national guard shall maintain records regarding every electric gun in their custody and control. The records shall report every instance of usage of the electric guns; in particular, records shall be maintained in a similar manner as for those of discharging of firearms. The county police departments, the department of public safety, the department of land and natural resources, and the army and air national guard shall annually report to the legislature regarding these records no later than twenty days before the beginning of each regular session of the legislature.

(e) The department of land and natural resources and the department of public safety shall ensure that each of ~~their~~ its conservation and resources enforcement officers and law enforcement officers who is authorized to use an electric gun and related equipment shall first receive training from the manufacturer or from a manufacturer-approved training program, as well as by manufacturer-certified or approved instructors in the use of electric guns prior to deployment of the electric guns and related equipment in public. Training for conservation and resources enforcement officers of the department of land

and natural resources and law enforcement officers of the department of public safety may be done concurrently to ensure cost savings.

(f) ~~[The] No later than June 30, 2018, the~~ conservation and resources enforcement program of the department of land and natural resources shall meet the law enforcement accreditation or recognition standards of the Commission on Accreditation for Law Enforcement Agencies, Inc., in the use of electric guns ~~[prior to obtaining electric guns, related equipment, and training for the use of the electric guns].~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved June 21, 2012.)

ACT 149

H.B. NO. 2593

A Bill for an Act Relating to Emergency Rules for Threats to Natural Resources or the Health of the Environment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the unique environment and natural resources of Hawaii are threatened by invasive species, changing climates, increased resource demands, and other sources. In some cases, these threats constitute imminent peril to natural resources requiring rapid response. The legislature has provided a means to adopt emergency rules in instances of imminent peril to public health, safety, or morals, or to livestock and poultry health, but not to natural resources.

The purpose of this Act is to provide a means for agencies to adopt emergency rules related to imminent peril to natural resources. This will allow agencies to respond rapidly to threats to natural resources.

SECTION 2. Section 91-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding the foregoing, if an agency finds that an imminent peril to the public health, safety, or morals, ~~[or]~~ to livestock and poultry health, or to natural resources requires adoption, amendment, or repeal of a rule upon less than thirty days’ notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting the abbreviated notice and hearing on the Internet as provided in section 91-2.6, as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.”

SECTION 3. Section 91-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each rule hereafter adopted, amended, or repealed shall become effective ten days after filing with the lieutenant governor in the case of the State, or with the respective county clerks in the case of the counties~~[-];~~ provided that:

- (1) If a later effective date is required by statute or specified in the rule, the later date shall be the effective date; provided further that no rule

- shall specify an effective date in excess of thirty days after the filing of the rule as provided herein~~[-]; and~~
- (2) An emergency rule shall become effective upon filing with the lieutenant governor in the case of the State, or with the respective county clerks in the case of the counties, for a period of not longer than one hundred twenty days without renewal unless extended in compliance with ~~[the provisions of subdivisions (1) and (2) of section 91-3(a);]~~ section 91-3(b) if the agency finds that immediate adoption of the rule is necessary because of imminent peril to the public health, safety, or morals~~[-]; or to natural resources~~. The agency's finding and brief statement of the reasons therefor shall be incorporated in the rule as filed. The agency shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the State for state agencies and in the county for county agencies within five days from the date of filing of the rule."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved June 21, 2012.)

ACT 150

H.B. NO. 1972

A Bill for an Act Relating to Historic Preservation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 6E-3, Hawaii Revised Statutes, is amended to read as follows:

"§6E-3 Historic preservation program. There is established within the department a division to administer a comprehensive historic preservation program, which shall include but not be limited to the following:

- (1) Development of an on-going program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, signage, and publications on the State's historical and cultural resources;
- (2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means; preservation, restoration, administration, or transference of the property; and the charging of reasonable admissions to that property;
- (3) Development of a statewide survey and inventory to identify and document historic properties, aviation artifacts, and burial sites, including all those owned by the State and the counties;
- (4) Preparation of information for the Hawaii register of historic places and listing on the national register of historic places;
- (5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations;

- (6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter;
- (7) Provision of technical and financial assistance to the counties and public and private agencies involved in historic preservation activities;
- (8) Coordination of activities of the counties in accordance with the state plan for historic preservation;
- (9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on or eligible for the Hawaii register of historic places;
- (10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;
- (11) Acquisition of burial sites in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means, to be held in trust;
- (12) Submittal of an annual report to the governor and legislature detailing the accomplishments of the year, recommendations for changes in the state plan or future programs relating to historic preservation, and an accounting of all income, expenditures, and the fund balance of the Hawaii historic preservation special fund;
- (13) Regulation of archaeological activities throughout the State;
- (14) Employment of sufficient professional and technical staff for the purposes of this chapter which may be in accordance with chapter 76;
- (15) The charging of fees to [at least partially defray the costs of administering sections 6E-3(13), 6E-8, and 6E-42 of this chapter;] be determined by the department that are proportional to the nature and complexity of the projects or services provided, and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this chapter, do not surpass the annual operating costs of the comprehensive historic preservation program;
- (16) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter; and
- (17) Development and adoption, in consultation with the office of Hawaiian affairs native historic preservation council, of rules governing permits for access by native Hawaiians and Hawaiians to cultural, historic, and pre-contact sites and monuments.”

SECTION 2. Section 6E-5.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The review board shall:

- (1) Order and enter historic properties into the Hawaii register of historic places on the basis of their value to Hawaii’s heritage;
- (2) Evaluate and, when appropriate, recommend the nomination of historic properties to the national register of historic places;
- (3) Review the state survey of historic properties undertaken in accordance with this chapter;
- (4) Review the content of the state historic preservation plan developed in accordance with this chapter;
- (5) Elect a chairperson and a vice-chairperson and adopt such rules as are necessary for the purposes of this section;

- (6) Maintain the Hawaii register of historic places, including all those listed on the national register of historic places, and a program of notification and publication regarding properties on the registers[-]; and
- (7) Develop policies on signage in historic districts."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved June 21, 2012.)

ACT 151

H.B. NO. 1726

A Bill for an Act Relating to Energy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 253, Session Laws of Hawaii 2007, is amended by amending section 8 to read as follows:

"SECTION 8. This Act shall take effect on July 1, 2007; provided that sections 304A-C, 304A-D, and 304A-E, Hawaii Revised Statutes, shall be repealed on June 30, [2012-] 2013."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2012.

(Approved June 25, 2012.)

ACT 152

S.B. NO. 1269

A Bill for an Act Relating to the Definition of Compensation for Purposes of the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-21.5, Hawaii Revised Statutes, is amended to read as follows:

"§88-21.5 Compensation. [~~Unless~~] (a) For a member who became a member before July 1, 2012, unless a different meaning is plainly required by context, as used in this part, "compensation" means [~~normal~~];

- (1) Normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed; [~~overtime,~~]
- (2) Overtime, differentials, and supplementary payments; [~~bonuses~~]
- (3) Bonuses and lump sum salary supplements; and [~~elective~~]
- (4) Elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended.

Bonuses and lump sum salary supplements shall be deemed earned when payable; provided that bonuses or lump sum salary supplements in excess of one-twelfth of compensation for the twelve months prior to the month in which the bonus or lump sum salary supplement is payable, exclusive of overtime, bonuses, and lump sum salary supplements, shall be deemed earned:

- (1) During the period agreed-upon by the employer and employee, but in any event over a period of not less than twelve months; or
- (2) In the absence of an agreement between the employer and the employee, over the twelve months prior to the date on which the bonus or lump sum salary supplement is payable.

(b) For a member who becomes a member after June 30, 2012, unless a different meaning is plainly required by context, "compensation" as used in this part:

- (1) Means:
 - (A) The normal periodic payments of money for service, the right to which accrues on an hourly, daily, monthly, or annual basis;
 - (B) Shortage differentials;
 - (C) Elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended; and
 - (D) Twelve-month differentials for employees of the department of education; and
- (2) Shall not include any other additional or extra payments to an employee or officer, including overtime, supplementary payments, bonuses, lump sum salary supplements, allowances, or differentials, including differentials for stand-by duty, temporary unusual work hazards, compression differentials, or temporary differentials, except for those expressly authorized pursuant to subsection (b)(1)(B), (b)(1)(C), and (b)(1)(D)."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 30, 2012.

(Approved June 25, 2012.)

ACT 153

H.B. NO. 2487

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 88-74, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (f) to read:

"(f) If a member, who becomes a member after June 30, 2012, has attained age sixty, the member's maximum retirement allowance shall be one and three-fourths per cent of the member's average final compensation multiplied by the total number of years of the member's credited service as a class A and class

B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member, plus a retirement allowance of one and three-fourths per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class H member; provided that:

- (1) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;
- (2) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;
- (3) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as an investigator of the department of the attorney general;
- (4) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;
- ~~[(5) If the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a water safety officer;~~
- ~~(6)~~ (5) If the member has at least ten years of credited service, of which the last five or more years prior to retirement is credited service as a public safety investigations staff investigator;
- ~~[(7)~~ (6) If the member:
 - (A) Has at least ten years of credited service as a firefighter;
 - (B) Is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer's physician; and
 - (C) Continues employment in a class A or class B position other than a firefighter; and
- ~~[(8)~~ (7) If the member:
 - (A) Has at least ten years of credited service as a police officer;
 - (B) Is deemed permanently medically disqualified due to a service related disability to be a police officer by the employer's physician; and
 - (C) Continues employment in a class A or class B position other than a police officer,

then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, ~~[water safety officer]~~ or public safety investigations staff investigator, the retirement allowance shall be two and one-fourth per cent of the member's average final compensation. The maximum retirement allowance for those members shall not exceed eighty per cent of the member's average final compensation. If the member has not attained age sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i)."

2. By amending subsection (i) to read:

"(i) Except as provided in subsections (f), (g), and (h), if a member, who becomes a member after June 30, 2012, has not attained age sixty at the date of

retirement, the member's retirement allowance shall be reduced, for each month the member's age at the date of retirement is below age sixty, as follows:

- (1) 0.4166 per cent for each month below age ~~[fifty-nine]~~ sixty and above age fifty-four and eleven months; plus
- (2) 0.3333 per cent for each month below age fifty-five and above age forty-nine and eleven months; plus
- (3) 0.2500 per cent for each month below age fifty and above age forty-four and eleven months; plus
- (4) 0.1666 per cent for each month below age forty-five;

provided that no reduction shall be made if the member has attained the age of fifty-five and has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, water safety officer, or emergency medical technician, of which the last five or more years prior to retirement is credited service in these capacities."

SECTION 2. Section 88-81, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Average final compensation is the average annual compensation, pay, or salary upon which a member has made contributions as required by parts II, VII, and VIII of this chapter."

2. By amending subsection (f) to read:

"(f) If a member, who becomes a member after June 30, 2012, has credited service rendered as an elective officer or as a legislative officer, the member's average final compensation shall be computed separately for each category of service as follows:

- (1) For the five highest paid years of credited service as an elective officer, or if the member has fewer than five years of credited service in that capacity, then the member's actual years of credited service;
- (2) For the five highest paid years of credited service as a legislative officer, or if the member has fewer than five years of credited service in that capacity, then the member's actual years of credited service;
- (3) For the five highest paid years of credited service as a judge, or if the member has fewer than ~~[three]~~ five years of credited service in that capacity, then the member's actual years of credited service; and
- (4) For the five highest paid years of credited service not included in paragraph (1), (2), or (3), or if the member has fewer than five years of credited service in that capacity, then the member's actual years of credited service."

SECTION 3. Section 88-335, Hawaii Revised Statutes, is amended to read as follows:

"§88-335 Ordinary disability retirement allowance. (a) Upon retirement for ordinary disability, a class H member who became a member before July 1, 2012, shall receive a maximum retirement allowance equal to the higher of either:

- (1) Two per cent of the average final compensation multiplied by the number of years of class H credited service unreduced for age, plus one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service unreduced for age; or

- (2) Twenty-five per cent of the member's average final compensation.
- (b) Upon retirement for ordinary disability, a class H member who becomes a member after June 30, 2012, shall receive a maximum retirement allowance equal to the higher of either:
 - (1) One and three-fourths per cent of the average final compensation multiplied by the number of years of class H credited service unreduced for age, plus one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service unreduced for age; or
 - (2) Twenty-five per cent of the member's average final compensation."

SECTION 4. Section 88-338, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Upon receipt by the system of proper proof of a class H member's death occurring in service or while on authorized leave without pay and if no pension is payable under section 88-339, there shall be paid to the member's designated beneficiary an ordinary death benefit as follows:

- (1) ~~[If the member had less than five years of credited service at the time of death, the]~~ The member's accumulated contributions shall be paid to the member's designated beneficiary[;] if:
 - (A) The member became a member before July 1, 2012, and had less than five years of credited service at the time of death; or
 - (B) The member became a member after June 30, 2012, and had less than ten years of credited service at the time of death;
- (2) ~~[If the member had five or more years of credited service at the time of death, an]~~ An amount equal to the member's hypothetical account balance shall be paid to the member's designated beneficiary[;] if:
 - (A) The member became a member before July 1, 2012, and had five or more years of credited service at the time of death; or
 - (B) The member became a member after June 30, 2012, and had ten or more years of credited service at the time of death;
- (3) If the member had ten or more years of credited service at the time of death, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 3 of section 88-83 and computed on the basis of section 88-332, unreduced for age; or
- (4) If the member was eligible for service retirement at the time of death, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 2 of section 88-83 and computed on the basis of section 88-332."

PART II

SECTION 5. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§88- Payment by employers of costs associated with significant non-base pay increases. (a) The contribution payable in each year to the pension accumulation fund by the State and each county shall include the actuarial present value, as determined by the system, of the excess maximum retirement allowance, payable over the employee’s or former employee’s actuarial life expectancy, resulting from significant non-base pay increases for each employee or former employee who became a member of the system prior to July 1, 2012. The additional contributions required by this section shall be payable as provided in subsection (e).

(b) The last employer of the employee or former employee shall pay the additional contributions required by this section.

(c) An excess maximum retirement allowance resulting from significant non-base pay increases occurs when:

(1) The employee’s or former employee’s average non-base pay, divided by the employee’s or former employee’s average base pay, is greater than ten per cent; and

(2) The employee’s or former employee’s average final compensation non-base pay ratio divided by the comparison period non-base pay ratio is greater than or equal to one-hundred twenty per cent.

(d) The amount of the “excess maximum retirement allowance resulting from significant non-base pay increases” is the amount by which an employee’s or former employee’s maximum retirement allowance exceeds what the employee’s or former employee’s maximum retirement allowance would be if the employee’s or former employee’s average final compensation was equal to the employee’s or former employee’s average base pay multiplied by the sum of one and the employee’s or former employee’s comparison period non-base pay ratio.

(e) The additional contributions required by this section shall be payable in a lump sum in the fiscal year following the fiscal year in which the employee or former employee retired; provided that, if the additional contributions required for the employees or former employees who retire in a fiscal year are greater than ten per cent of the employer’s contributions (excluding the additional contributions) to the pension accumulation fund for that fiscal year, the employer may pay the additional contributions over a period of three fiscal years in installments equal to no less than one-third of the original amount of the required additional contributions, plus interest on the unpaid balance, commencing on the first day of the fiscal year following the retirement of the employees or former employees, at an annual rate equal to the investment yield rate assumption for actuarial valuations of the system.”

SECTION 6. Section 88-21, Hawaii Revised Statutes, is amended by adding eight new definitions to be appropriately inserted and to read as follows:

“Average base pay” means the total base pay included in a member’s average final compensation, divided by the number of years used to determine average final compensation.

“Average final compensation non-base pay ratio” means the average non-base pay divided by the average base pay.

“Average non-base pay” means the total non-base pay included in a member’s average final compensation divided by the number of years used to determine the member’s average final compensation.

“Base pay” means the normal periodic payments of money for service, the right to which accrues on a regular basis in proportion to the service performed; recurring differentials; and elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended.

“Comparison period” means those years in the ten years of credited service prior to termination of service that are not included in the period for determining a member’s average final compensation or, if the member has less than ten years of credited service prior to termination of service, the years of the member’s credited service that are not included in the determination of the member’s average final compensation.

“Comparison period average base pay” means the total base pay for the comparison period divided by the number of years in the comparison period.

“Comparison period average non-base pay” means the total non-base pay for the comparison period divided by the number of years in the comparison period.

“Comparison period non-base pay ratio” means the comparison period average non-base pay divided by the comparison period average base pay.”

PART III

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on July 1, 2012.

(Approved June 25, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 154

H.B. NO. 2127

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Hawaii Preparatory Academy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 116, Session Laws of Hawaii 2007, is amended by amending sections 5 and 6 to read as follows:

“SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, [2012,] 2017, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 4. In making this

ACT 155

determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, ~~[2012.]~~ 2017.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2012.

(Approved June 25, 2012.)

ACT 155

S.B. NO. 745

A Bill for an Act Relating to Seawater Air Conditioning.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 165, Sessions Laws of Hawaii 2007, is amended by amending sections 4 and 5 to read as follows:

“SECTION 4. The department of budget and finance, from time to time, including times subsequent to June 30, ~~[2012]~~ 2015, may issue special purpose revenue bonds in whatever principal amounts the department determines to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption.

In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, ~~[2012]~~ 2015.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2012.

(Approved June 25, 2012.)

ACT 156

S.B. NO. 2466

A Bill for an Act Relating to Long-Term Care Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Long-term care facilities in the State face major financial challenges in providing quality health care for Hawaii residents. These challenges are largely the result of payments to medicaid enrollees for care that do not cover

the actual costs of care. The legislature finds that federal funding to help sustain Hawaii's long-term care facilities financially may be accessed through a provider fee.

Provider fees exist in forty-seven states and the District of Columbia as a means of drawing down federal funds to sustain their medicaid programs due to rising state budget deficits, increasing health care costs, and expanding medicaid rolls. Implementation of a provider fee in Hawaii would help stabilize declining medicaid payments to facilities and slow the erosion of access to care for beneficiaries served by the program.

Medicaid is jointly financed by the federal and state government, but by statutory formula, the federal government pays between fifty per cent and seventy-four per cent of medicaid costs incurred by states for care delivered to their medicaid beneficiaries. Federal medical assistance percentages vary by state, with states that have lower per capita incomes receiving higher federal matching rates. Under federal rules, the state share must be public funds that are not federal funds.

Provider fees, which are collected from specific categories of health care items and services, may be assessed on nineteen different classes of health care services, including inpatient and outpatient hospital and nursing facility services. However, there are limitations on the way provider fees are structured. The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, P.L. 102-234, passed by Congress in 1991, imposes the following requirements:

- (1) Broad-based. To be considered broad-based, a provider fee must be imposed on all health care items or services furnished by all non-federal, non-public providers in the class in the State. Provider fee programs may exclude public facilities without violating federal law;
- (2) Uniformly imposed. In general, a provider fee is uniformly imposed if it is the same amount or rate for each provider in the class; and
- (3) Hold harmless prohibition. States may not hold providers harmless. A provider fee is considered to hold the provider harmless if the providers paying the fee receive, directly or indirectly, a non-medicaid payment from the state or any offset or waiver that guarantees to hold the provider harmless for all or a portion of the fee. A provider fee is also considered to hold the provider harmless if the medicaid payments to the provider vary based only on the amount of the fees paid by the provider.

The maximum provider fee a state may receive is currently six per cent of net patient revenue. A number of proposals have been made, but not implemented, to eliminate medicaid provider fee programs in order to reduce the federal deficit. However, since provider fees are used by so many states, many of those who are knowledgeable about this subject view elimination of provider fees as unlikely due to strong political support for the program. A more realistic expectation is a reduction of the provider fee maximum, as proposed by President Barack Obama's fiscal year 2012 budget, which would reduce the maximum to three and one-half per cent in 2017. This proposal recognizes that provider fees are essential for most states to maintain a stable, functioning medicaid program.

In Hawaii, a provider fee would increase medicaid payments at a time when constraints on the State's budget have forced a reduction in payments and optional benefits. The additional federal funds obtained via the fee program would reduce the amount of losses incurred by nursing facilities. As such, the provider fee would help preserve access to health care for the medicaid population and sustain the State's entire health care system.

State long-term care facilities shall not be covered by the nursing facility sustainability fee. However, other provisions of this Act are intended to assure that state facilities will benefit from the use of their certified expenditures and intergovernmental transfers to generate federal funds to cover their operating expenses.

The purpose of this Act is to ensure access to health care for medicaid recipients by establishing a nursing facility sustainability fee and a special fund to receive moneys from the nursing facility sustainability fee in order to receive federal medicaid matching funds under the QUEST expanded medicaid section 1115 demonstration waiver.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
NURSING FACILITY SUSTAINABILITY PROGRAM**

§ -1 **Title.** This chapter shall be known and may be cited as the “Nursing Facility Sustainability Program Act”.

§ -2 **Findings and declaration of necessity.** It is the intent of the legislature to establish a special fund within the state treasury to receive revenue from the nursing facility sustainability fee to be administered by the department and to use it to receive federal medicaid matching funds under the section 1115 waiver.

§ -3 **Definitions.** As used in this chapter:

“Continuing care retirement community” means an entity providing nursing facility services, along with assisted living or independent living on a contiguous campus with the number of assisted living and independent living beds in the aggregate being at least twice the number of nursing facility beds. For purposes of this definition, “contiguous” means land adjoining or touching other property held by the same or related organization, and includes land divided by a public road.

“Department” means the department of human services.

“Net patient service revenue” means gross inpatient revenues from services provided to nursing facility patients less reductions from gross inpatient revenue resulting from an inability to collect payment of charges. Inpatient service revenue excludes non-patient care revenues, such as revenues from beauty and barber services, vending income, interest and contributions, revenues from the sale of meals, and all outpatient revenues. Reductions from gross revenue include contractual adjustments, uncompensated care, administrative, courtesy, and policy discounts and adjustments, and other revenue deductions.

“Nursing facility” means any facility licensed pursuant to chapter 11-94.1, Hawaii administrative rules.

“QUEST” means the demonstration project developed by the department described in Hawaii’s section 1115 waiver and includes the QUEST, QUEST-Net, and QUEST-ACE components.

“QUEST expanded access” means the demonstration project developed by the department described in Hawaii’s section 1115 waiver.

“Resident day” means a calendar day of care provided to a nursing facility resident, including the day of admission and excluding the day of discharge; provided that one resident day shall be deemed to exist when admission and discharge occur on the same day. A resident day includes a day on which a bed

is held for a patient and for which the facility receives compensation for holding the bed.

“Section 1115 waiver” means the QUEST expanded medicaid section 1115 demonstration waiver (Number 11-W-00001/9).

§ -4 Nursing facility sustainability program special fund. (a) There is created in the state treasury the nursing facility sustainability program special fund to be administered by the department into which shall be deposited all moneys collected under this chapter.

- (b) Moneys in the special fund shall consist of:
 - (1) All revenues collected or received by the department from the nursing facility sustainability fee required by this chapter;
 - (2) All federal medicaid funds received by the department as a result of matching expenditures made with the nursing facility sustainability fees;
 - (3) Any interest or penalties levied in conjunction with the administration of this chapter; and
 - (4) Any appropriations, federal funds, donations, gifts, or moneys from any other sources.
- (c) Revenue from the nursing facility sustainability fee shall be used exclusively as follows:
 - (1) No less than eighty-eight per cent of the revenue from the nursing facility sustainability fee shall be used to match federal medicaid funds, with the combined total to be used to enhance capitated rates to the QUEST expanded access plans for the purpose of increasing medicaid payments to private nursing facilities;
 - (2) Twelve per cent of the revenue from the nursing facility sustainability fee shall be used by the department to restore funding for the three per cent reduction in reimbursements to nursing facilities effective 2012, and to the extent remaining after restoring the three per cent reduction for other purposes; and
 - (3) All moneys remaining in the special fund on December 30, 2013, shall be distributed to nursing facilities within thirty days in the same proportions as received from the nursing facilities.
- (d) The department shall utilize federal funds derived from state long-term care facility certified expenditures to make supplemental payments to state long-term care facilities to the extent permitted by federal law. The department may receive intergovernmental transfers from the state long-term care facilities to support increased capitation rates to health plans for the benefit of the state long-term care facilities. During any period in which the nursing facility sustainability fee is in effect, certified expenditures of state long-term care facilities shall not be used to make or support direct payments to private nursing facilities.
- (e) The nursing facility sustainability program special fund ceiling appropriation shall be \$12,000,000 for fiscal year 2012-2013 and \$10,000,000 in federal funds for HMS 401 for fiscal year 2012-2013.

§ -5 Nursing facility sustainability fee. (a) Effective July 1, 2012, the department shall charge and collect a provider fee on health care items or services provided by nursing facilities.

(b) The nursing home sustainability fee shall be based on the net patient service revenue of all nursing facilities that are subject to the sustainability fee, as determined by the department.

(c) The nursing facility sustainability fee shall not exceed four per cent of net patient service revenue and shall be calculated and paid on a per resident

day basis. The per resident daily fee shall be the same amount for each affected facility, except as prescribed in subsection (d)(2).

(d) In accordance with the redistribution method set forth in title 42 Code of Federal Regulations section 433.68(e)(1) and (2), the department shall seek a waiver of the broad-based and uniformity provider fee requirements under federal law from which to exclude certain nursing facilities and to permit certain high volume medicaid nursing facilities or facilities with a high number of total annual patient days to pay the sustainability fee at a lesser amount per resident day, as follows:

- (1) The department shall exempt the following nursing facility providers from the nursing facility sustainability fee subject to federal approval under title 42 Code of Federal Regulations section 433.68 (e)(2):
 - (A) Nursing facilities with twenty-eight or fewer licensed beds;
 - (B) Nursing facilities owned or operated by the Hawaii health systems corporation; and
 - (C) Continuing care retirement communities.
- (2) The department shall reduce the fee for high volume medicaid nursing facilities or facilities with high patient volumes in order to meet the redistributive tests of title 42 Code of Federal Regulations section 433.68(e)(2).
- (3) The department, with agreement by the nursing facility trade associations located in Hawaii, may modify, add to, or reduce the categories of facilities exempt from the assessment if necessary to obtain and maintain approval of the waiver by the Centers for Medicare and Medicaid Services, if the modification is consistent with the purposes of this chapter.

§ -6 Nursing facility sustainability fee assessment. (a) Nursing facilities shall pay the nursing facility sustainability fee to the nursing facility sustainability program special fund in accordance with this chapter.

(b) The department shall determine, with agreement by the nursing facility trade associations located in Hawaii, the fee rate prospectively for the applicable fiscal year.

(c) The department shall collect and each nursing facility shall pay in twelve equal installments the nursing facility sustainability fee in section -5 on a monthly basis, subject to the terms of this section. The fee shall be due within thirty days after the end of each month, with the initial payment due on the later of July 31, 2012, or forty-five days after the required federal approvals for the assessment and any increase in health plan capitation payments have been secured from the Centers for Medicare and Medicaid Services.

§ -7 Federal approval. The department shall seek a waiver and other approvals from the Centers for Medicare and Medicaid Services that may be necessary to implement the nursing facility sustainability program, including the approval of the contracts between the State and the QUEST and QUEST expanded access health plans.

§ -8 Multifacility locations. If an entity conducts, operates, or maintains more than one nursing facility, the entity shall pay the nursing facility sustainability fee for each nursing facility separately.

§ -9 Penalties for failure to pay nursing facility sustainability fee. (a) If a nursing facility fails to pay the full amount of the nursing facility sustain-

ability fee when due, there shall be added to the fee, unless waived by the department for reasonable cause, a penalty equal to two per cent of the fee that was not paid when due. Any subsequent payments shall be credited first to unpaid fee amounts rather than to penalty or interest amounts, beginning with the most delinquent installment.

(b) In addition to the penalty identified in this section, the department may seek any of the following remedies for failure of any nursing facility to pay its fee when due:

- (1) Withholding any medical assistance reimbursement payments until such time as the fee amount is paid in full;
- (2) Suspension or revocation of the nursing facility license; or
- (3) Development of a plan that requires the nursing facility to pay any delinquent fee in installments.

§ -10 Enhanced rates to QUEST expanded access plans. In accordance with title 42 Code of Federal Regulations section 438, the department shall use revenues from the nursing facility sustainability fee and federal matching funds to enhance the capitated rates paid to the QUEST expanded access plans for the state fiscal year 2012-2013 consistent with the following objectives:

- (1) The rate enhancement shall be used exclusively for increasing reimbursements to private nursing facilities to support the availability of services and to ensure access to care to QUEST expanded access enrollees;
- (2) The rate enhancement shall be made part of the monthly capitated rates by the department to the QUEST expanded access plans, which shall provide documentation to the department and the nursing facility trade associations located in Hawaii certifying that the revenues received under paragraph (1) are used in accordance with this section;
- (3) The rate enhancement shall be actuarially sound and approved by the federal government for federal fund participation; and
- (4) The department shall modify the fee-for-service reimbursement rates of the nursing facilities to recognize the medicaid portion of the nursing facility sustainability fee as an additional cost of serving medicaid patients, and to provide a uniform percentage increase in pre-existing facility-specific rates.

§ -11 Payment of rate enhancement. The rate enhancements referred to in section -10 shall be retroactive to the effective date of this legislation. Retroactive rate enhancements shall be paid within thirty days of notification by the Centers for Medicare and Medicaid Services to the department of all necessary approvals.

§ -12 Special designation of nursing facility sustainability program special fund. Notwithstanding section 37-53 and any law or administrative rule to the contrary, the specific purposes set out in section -4(c) are established as being pre-eminent uses of the nursing facility sustainability program special fund and shall not be used for any other purposes, notwithstanding any authority granted to the governor or any other state official by any other statutory provisions relating to the allocation or reallocation of funds.

§ -13 Termination. (a) Collection of the nursing facility sustainability fee under section -5 shall be discontinued if:

- (1) The waiver in section -7 or the enhanced capitation rates in section -10 have not been approved by the Centers for Medicare and Medicaid Services;
- (2) The department reduces funding for nursing facility services below the state appropriation in effect on June 30, 2012;
- (3) The department or any other state agency uses the money in the special fund for any use other than the uses permitted pursuant to this chapter; or
- (4) Federal financial participation to match the nursing facility sustainability fee becomes unavailable under federal law. In such case, the department shall terminate the collection of the fee beginning on the effective date of the federal statutory, regulatory, or interpretive change.

(b) If collection of the nursing facility sustainability fee is discontinued as provided in this section, any remaining money in the special fund shall be returned to the nursing facilities from which the fee was collected within thirty days in the same proportions as received from the nursing facilities.

§ -14 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

SECTION 3. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special out-of-school time instructional program fund under section 302A-1310;
- (3) School cafeteria special funds of the department of education;
- (4) Special funds of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Funds of the employees’ retirement system created by section 88-109;
- (9) Unemployment compensation fund established under section 383-121;
- (10) Hawaii hurricane relief fund established under section 431P-2;
- (11) Convention center enterprise special fund established under section 201B-8;
- (12) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
- (13) Tourism special fund established under section 201B-11;
- (14) Universal service fund established under section 269-42;
- (15) Emergency and budget reserve fund under section 328L-3;
- (16) Public schools special fees and charges fund under section 302A-1130;
- (17) Sport fish special fund under section 187A-9.5;
- (18) Center for nursing special fund under section 304A-2163;
- (19) Passenger facility charge special fund established by section 261-5.5;
- (20) Court interpreting services revolving fund under section 607-1.5;

- (21) Hawaii cancer research special fund;
- (22) Community health centers special fund;
- (23) Emergency medical services special fund;
- (24) Rental motor vehicle customer facility charge special fund established under section 261-5.6; ~~and~~
- (25) Shared services technology special fund under section 27-43[~~5~~]; and
- (26) Nursing facility sustainability program special fund.

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012, and shall be repealed on June 30, 2013; provided that section -4(c), Hawaii Revised Statutes, established by section 2 of this Act, shall be repealed on December 31, 2013.

(Approved June 26, 2012.)

ACT 157

S.B. NO. 2810

A Bill for an Act Relating to Employment Exemption for Domestic Services Authorized By the Department of Human Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of “employment” to read as follows:

““Employment” means any service performed by an individual for another person under any contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully entered into. It includes service of public officials, whether elected or under any appointment or contract of hire, express or implied.

“Employment” does not include:

- (1) Service for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity;
- (2) Service for a religious, charitable, educational, or nonprofit organization if performed by a recipient of aid therefrom and the service is incidental to or in return for the aid received;
- (3) Service for a school, college, university, college club, fraternity, or sorority if performed by a student who is enrolled and regularly attending classes and in return for board, lodging, or tuition furnished, in whole or in part;
- (4) Service performed by a duly ordained, commissioned, or licensed minister, priest, or rabbi of a church in the exercise of the minister’s, priest’s, or rabbi’s ministry or by a member of a religious order in the exercise of nonsecular duties required by the order;
- (5) Service performed by an individual for another person solely for personal, family, or household purposes if the cash remuneration received is less than \$225 during the current calendar quarter and during each completed calendar quarter of the preceding twelve-month period;

- (6) Domestic, in-home and community-based services for persons with developmental and intellectual disabilities under the medicaid home and community-based services program pursuant to Title 42 Code of Federal Regulations sections 440.180 and 441.300, and Title 42 Code of Federal Regulations, Part 434, Subpart A, as amended, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments;
- (7) Domestic services, which include attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, or when provided through state-funded medical assistance to individuals ineligible for medicaid, when performed by an individual in the employ of a recipient of social service payments. For the purposes of this paragraph only, a "recipient of social service payments" is a person who is an eligible recipient of social services such as attendant care or day care services;
- [(7)] (8) Service performed without wages for a corporation without employees by a corporate officer in which the officer is at least a twenty-five per cent stockholder;
- [(8)] (9) Service performed by an individual for a corporation if the individual owns at least fifty per cent of the corporation; provided that no employer shall require an employee to incorporate as a condition of employment;
- [(9)] (10) Service performed by an individual for another person as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the other person is performed for remuneration solely by way of commission;
- [(10)] (11) Service performed by a member of a limited liability company if the member is an individual and has a distributional interest, as defined in section 428-101, of not less than fifty per cent in the company; provided that no employer shall require an employee to form a limited liability company as a condition of employment;
- [(11)] (12) Service performed by a partner of a partnership, as defined in section 425-101, if the partner is an individual; provided that no employer shall require an employee to become a partner or form a partnership as a condition of employment;
- [(12)] (13) Service performed by a partner of a limited liability partnership if the partner is an individual and has a transferable interest as described in section 425-127 in the partnership of not less than fifty per cent; provided that no employer shall require an employee to form a limited liability partnership as a condition of employment; and
- [(13)] (14) Service performed by a sole proprietor.

As used in this definition, "religious, charitable, educational, or nonprofit organization" means a corporation, unincorporated association, community chest, fund, or foundation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual."

SECTION 2. Section 392-5, Hawaii Revised Statutes, is amended to read as follows:

“§392-5 Excluded services. “Employment” as defined in section 392-3 shall not include:

- (1) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, performed in any calendar quarter by an individual if the cash remuneration paid by the employer for such service is less than \$225;
- (2) Service not in the course of the employer’s trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. An individual shall be deemed to be regularly employed to perform service not in the course of the employer’s trade or business during a calendar quarter only if:
 - (A) On each of some twenty-four days during the quarter the individual performs the service for some portion of the day; or
 - (B) The individual was regularly employed, as determined under subparagraph (A), by the employer in the performance of the service during the preceding calendar quarter;
- (3) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
- (4) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:
 - (A) The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);
 - (B) The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employer who, for some portion in each of twenty different calendar weeks in either the current or preceding calendar year, had in the employer’s employ one or more persons performing the service, whether or not the weeks were consecutive and whether or not the same individuals performed the service in each week; and
 - (C) The service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
- (5) Service performed by an individual in the employ of the individual’s son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child’s father or mother;
- (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter;

- (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing that is wholly owned by one or more such states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1986;
- (8) Service with respect to which temporary disability compensation is payable for sickness under a temporary disability insurance system established by an act of Congress;
- (9) Service performed in any calendar quarter in the employ of any nonprofit organization exempt from income tax under section 501 of the Internal Revenue Code of 1986, if:
 - (A) The remuneration for such service is less than \$50;
 - (B) The service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;
 - (C) The service is performed by a duly ordained, commissioned, or licensed minister or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of nonsecular duties required by the order; or
 - (D) The service is performed for a church by an employee who fails to meet the eligibility requirements of section 392-25;
- (10) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents, if:
 - (A) No part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual; and
 - (B) Eighty-five per cent or more of its income consists of amounts collected from members and amounts contributed by the employer of the members for the sole purpose of making such payments and meeting expenses;
- (11) Service performed in the employ of a voluntary employee's beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if:
 - (A) Admission to membership in the association is limited to individuals who are officers or employees of the United States government; and
 - (B) No part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual;
- (12) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 of the Internal Revenue Code of 1986, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;
- (13) Service performed in the employ of any instrumentality wholly owned by a foreign government, if:

- (A) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
- (B) The United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;
- (15) Service performed by an individual for an employer as an insurance producer, if all such service performed by the individual for the employer is performed for remuneration solely by way of commission;
- (16) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (17) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by the employer's duly approved election, are deemed to be performed entirely within the agency's state;
- (18) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
- (19) Domestic in-home and community-based services for persons with developmental and intellectual disabilities under the medicaid home and community-based services program pursuant to Title 42 Code of Federal Regulations sections 440.180 and 441.300, and Title 42 Code of Federal Regulations, Part 434, Subpart A, as amended, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments;
- (20) Domestic services, which include attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, or when provided through state-funded medical assistance to individuals ineligible for medicaid, when performed by an individual in the employ of a recipient of social service payments. For the purposes of this paragraph only, a "recipient of social service payments" is a person who is an eligible recipient of social services such as attendant care or day care services;

- ~~[(20)]~~ (21) Service performed by a vacuum cleaner salesperson for an employing unit, if all such services performed by the individual for such employing unit are performed for remuneration solely by way of commission; or
- ~~[(21)]~~ (22) Service performed by an individual for an employer as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the employer is performed for remuneration solely by way of commission.”

SECTION 3. Section 393-5, Hawaii Revised Statutes, is amended to read as follows:

“§393-5 **Excluded services.** “Employment” as defined in section 393-3 does not include:

- (1) Service performed by an individual in the employ of an employer who, by the laws of the United States, is responsible for care and cost in connection with such service;
- (2) Service performed by an individual in the employ of the individual’s spouse, son, or daughter, and service performed by an individual under the age of twenty-one in the employ of the individual’s father or mother;
- (3) Service performed in the employ of a voluntary employee’s beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if:
 - (A) Admission to membership in the association is limited to individuals who are officers or employees of the United States government; and
 - (B) No part of the net earnings of the association inures (other than through such payments) to the benefits of any private shareholder or individual;
- (4) Service performed by an individual for an employer as an insurance agent or as an insurance solicitor if all service performed by the individual for the employer is performed for remuneration by way of commission;
- (5) Service performed by an individual for an employer as a real estate salesperson or as a real estate broker if all service performed by the individual for the employer is performed for remuneration by way of commission;
- (6) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the provisions of law relating to federal employment, including unemployment compensation; ~~[and]~~
- (7) Domestic in-home and community-based services for persons with developmental and intellectual disabilities under the medicaid home and community-based services program pursuant to Title 42 Code of Federal Regulations sections 440.180 and 441.300, and Title 42 Code of Federal Regulations, Part 434, Subpart A, as amended, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined and amended from time to time by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and

- who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments[-]; and
- (8) Domestic services, which include attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, or when provided through state-funded medical assistance to individuals ineligible for medicaid, when performed by an individual in the employ of a recipient of social service payments. For the purposes of this paragraph only, a "recipient of social service payments" is a person who is an eligible recipient of social services such as attendant care or day care services."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 26, 2012.)

Note

1. Prior to amendment "employees" appeared here.

ACT 158

S.B. NO. 2833

A Bill for an Act Relating to Employment Exemption for Domestic Services for Persons with Developmental and Intellectual Disabilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 383-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) "Employment" shall not include:

- (1) Agricultural labor as defined in section 383-9 if it is performed by an individual who is employed by an employing unit:
- (A) That, during each calendar quarter in both the current and the preceding calendar years, paid less than \$20,000 in cash remuneration to individuals employed in agricultural labor, including labor performed by an alien referred to in subparagraph (C); and
- (B) That had, in each of the current and the preceding calendar years:
- (i) No more than nineteen calendar weeks, whether consecutive or not, in which agricultural labor was performed by its employees, including labor performed by an alien referred to in subparagraph (C); or
- (ii) No more than nine individuals in its employ performing agricultural labor in any one calendar week, whether or not the same individuals performed the labor in each week, including labor performed by an alien referred to in subparagraph (C); or
- (C) If such agricultural labor is performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

- (2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority as set forth in section 3306(c)(2) of the Internal Revenue Code of 1986, as amended;
- (3) Service not in the course of the employing unit's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter if:
 - (A) On each of some twenty-four days during the quarter the individual performs the service for some portion of the day; or
 - (B) The individual was regularly employed as determined under subparagraph (A) by the employing unit in the performance of the service during the preceding calendar quarter;
- (4) (A) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
- (B) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:
 - (i) The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);
 - (ii) The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employing unit which had in its employ one or more individuals performing the service for some portion of a day in each of twenty calendar weeks all occurring, whether consecutive or not, in either the current or the preceding calendar year; and
 - (iii) Service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
- (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
- (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this chapter shall apply to those instrumentalities, and to services performed for those instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units,

individuals, and services; provided that if this State is not certified for any year by the Secretary of Labor under section 3304(c) of the federal Internal Revenue Code, the payments required of those instrumentalities with respect to that year shall be refunded by the department of labor and industrial relations from the fund in the same manner and within the same period as is provided in section 383-76 with respect to contributions erroneously collected;

- (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to the service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1986, as amended;
- (8) Service with respect to which unemployment compensation is payable under an unemployment system established by an act of Congress;
- (9) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal Internal Revenue Code (other than an organization described in section 401(a) or under section 521 of the Internal Revenue Code), if:
 - (i) The remuneration for the service is less than \$50; or
 - (ii) The service is performed by a fully ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;
- (B) Service performed in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university; or
- (C) Service performed by an individual who is enrolled at a non-profit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of such program, and the institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
- (10) Service performed in the employ of a foreign government, including service as a consular or other officer or employee of a nondiplomatic representative;
- (11) Service performed in the employ of an instrumentality wholly owned by a foreign government:
 - (A) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
 - (B) If the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption

is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

- (12) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;
- (13) Service performed by an individual for an employing unit as an insurance producer, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
- (14) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (15) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are deemed to be performed entirely within the agency's state;
- (16) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
- (17) Service performed by an individual for an employing unit as a real estate salesperson, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
- (18) Service performed by a registered sales representative for a registered travel agency, when the service performed by the individual for the travel agent is performed for remuneration by way of commission;
- (19) Service performed by a vacuum cleaner salesperson for an employing unit, if all services performed by the individual for the employing unit are performed for remuneration solely by way of commission;
- (20) Service performed for a family-owned private corporation organized for profit that employs only members of the family who each own at least fifty per cent of the shares issued by the corporation; provided that:
 - (A) The private corporation elects to be excluded from coverage under this chapter;
 - (B) The election for exclusion shall apply to all shareholders and under the same circumstances;
 - (C) No more than two members of a family may be eligible per entity for exclusion under this paragraph;
 - (D) The exclusion shall be irrevocable for five years;
 - (E) The family-owned private corporation presents to the department proof that it has paid federal unemployment insurance taxes as required by federal law; and
 - (F) The election to be excluded from coverage shall be effective the first day of the calendar quarter in which the application and

- all substantiating documents requested by the department are filed with the department;
- (21) Service performed by a direct seller as defined in section 3508 of the Internal Revenue Code of 1986;
 - (22) Service performed by an election official or election worker as defined in section 3309(b)(3)(F) of the Internal Revenue Code of 1986, as amended;
 - (23) Service performed by an inmate or any person committed to a penal institution[]; and[]
 - (24) Domestic in-home and community-based services for persons with developmental and intellectual disabilities under the medicaid home and community-based services program pursuant to Title 42 Code of Federal Regulations sections 440.180 and 441.300, and Title 42 Code of Federal Regulations, Part 434, Subpart A, as amended, or when provided through state funded medical assistance to individuals ineligible for medicaid, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined and amended from time to time by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments unless the individual is an employee and not an independent contractor of the recipient of social service payments under the Federal Unemployment Tax Act."

SECTION 2. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of "employment" to read as follows:

"“Employment” means any service performed by an individual for another person under any contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully entered into. It includes service of public officials, whether elected or under any appointment or contract of hire, express or implied.

“Employment” does not include:

- (1) Service for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity;
- (2) Service for a religious, charitable, educational, or nonprofit organization if performed by a recipient of aid there from and the service is incidental to or in return for the aid received;
- (3) Service for a school, college, university, college club, fraternity, or sorority if performed by a student who is enrolled and regularly attending classes and in return for board, lodging, or tuition furnished, in whole or in part;
- (4) Service performed by a duly ordained, commissioned, or licensed minister, priest, or rabbi of a church in the exercise of the minister’s, priest’s, or rabbi’s ministry or by a member of a religious order in the exercise of nonsecular duties required by the order;
- (5) Service performed by an individual for another person solely for personal, family, or household purposes if the cash remuneration received is less than \$225 during the current calendar quarter and during each completed calendar quarter of the preceding twelve-month period;
- (6) Domestic, in-home and community-based services for persons with developmental and intellectual disabilities under the medicaid home

and community-based services program pursuant to Title 42 Code of Federal Regulations sections 440.180 and 441.300, and Title 42 Code of Federal Regulations, Part 434, Subpart A, as amended, or when provided through state funded medical assistance to individuals ineligible for medicaid, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments;

- (7) Service performed without wages for a corporation without employees by a corporate officer in which the officer is at least a twenty-five per cent stockholder;
- (8) Service performed by an individual for a corporation if the individual owns at least fifty per cent of the corporation; provided that no employer shall require an employee to incorporate as a condition of employment;
- (9) Service performed by an individual for another person as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the other person is performed for remuneration solely by way of commission;
- (10) Service performed by a member of a limited liability company if the member is an individual and has a distributional interest, as defined in section 428-101, of not less than fifty per cent in the company; provided that no employer shall require an employee to form a limited liability company as a condition of employment;
- (11) Service performed by a partner of a partnership, as defined in section 425-101, if the partner is an individual; provided that no employer shall require an employee to become a partner or form a partnership as a condition of employment;
- (12) Service performed by a partner of a limited liability partnership if the partner is an individual and has a transferable interest as described in section 425-127 in the partnership of not less than fifty per cent; provided that no employer shall require an employee to form a limited liability partnership as a condition of employment; and
- (13) Service performed by a sole proprietor.

As used in this definition, "religious, charitable, educational, or nonprofit organization" means a corporation, unincorporated association, community chest, fund, or foundation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual."

SECTION 3. Section 392-5, Hawaii Revised Statutes, is amended to read as follows:

"§392-5 Excluded services. "Employment" as defined in section 392-3 shall not include:

- (1) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, performed in any calendar quarter by an individual if the cash remuneration paid by the employer for such service is less than \$225;

- (2) Service not in the course of the employer's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. An individual shall be deemed to be regularly employed to perform service not in the course of the employer's trade or business during a calendar quarter only if:
 - (A) On each of some twenty-four days during the quarter the individual performs the service for some portion of the day; or
 - (B) The individual was regularly employed, as determined under subparagraph (A), by the employer in the performance of the service during the preceding calendar quarter;
- (3) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
- (4) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:
 - (A) The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);
 - (B) The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employer who, for some portion in each of twenty different calendar weeks in either the current or preceding calendar year, had in the employer's employ one or more persons performing the service, whether or not the weeks were consecutive and whether or not the same individuals performed the service in each week; and
 - (C) The service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
- (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
- (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter;
- (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing that is wholly owned by one or more such states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, exempt from the tax imposed by section 3301 of the Internal Revenue Code [of 1986];

- (8) Service with respect to which temporary disability compensation is payable for sickness under a temporary disability insurance system established by an act of Congress;
- (9) Service performed in any calendar quarter in the employ of any nonprofit organization exempt from income tax under section 501 of the Internal Revenue Code [~~of 1986~~], if:
 - (A) The remuneration for such service is less than \$50;
 - (B) The service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;
 - (C) The service is performed by a duly ordained, commissioned, or licensed minister or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of nonsecular duties required by the order; or
 - (D) The service is performed for a church by an employee who fails to meet the eligibility requirements of section 392-25;
- (10) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents, if:
 - (A) No part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual; and
 - (B) Eighty-five per cent or more of its income consists of amounts collected from members and amounts contributed by the employer of the members for the sole purpose of making such payments and meeting expenses;
- (11) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if:
 - (A) Admission to membership in the association is limited to individuals who are officers or employees of the United States government; and
 - (B) No part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual;
- (12) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 of the Internal Revenue Code [~~of 1986~~], if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;
- (13) Service performed in the employ of any instrumentality wholly owned by a foreign government, if:
 - (A) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
 - (B) The United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

- (14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;
- (15) Service performed by an individual for an employer as an insurance producer, if all such service performed by the individual for the employer is performed for remuneration solely by way of commission;
- (16) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (17) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by the employer's duly approved election, are deemed to be performed entirely within the agency's state;
- (18) Service performed by an individual who, pursuant to the [Federal] federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
- (19) Domestic in-home and community-based services for persons with developmental and intellectual disabilities under the medicaid home and community-based services program pursuant to Title 42 Code of Federal Regulations sections 440.180 and 441.300, and Title 42 Code of Federal Regulations, Part 434, Subpart A, as amended, or when provided through state funded medical assistance to individuals ineligible for medicaid, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments;
- (20) Service performed by a vacuum cleaner salesperson for an employing unit, if all such services performed by the individual for such employing unit are performed for remuneration solely by way of commission; or
- (21) Service performed by an individual for an employer as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the employer is performed for remuneration solely by way of commission."

SECTION 4. Section 393-5, Hawaii Revised Statutes, is amended to read as follows:

"§393-5 Excluded services. "Employment" as defined in section 393-3 does not include:

- (1) Service performed by an individual in the employ of an employer who, by the laws of the United States, is responsible for care and cost in connection with such service;

- (2) Service performed by an individual in the employ of individual's spouse, son, or daughter, and service performed by an individual under the age of twenty-one in the employ of the individual's father or mother;
- (3) Service performed in the employ of a voluntary employee's beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if:
 - (A) Admission to membership in the association is limited to individuals who are officers or employees of the United States government; and
 - (B) No part of the net earnings of the association inures (other than through such payments) to the benefits of any private shareholder or individual;
- (4) Service performed by an individual for an employer as an insurance agent or as an insurance solicitor if all service performed by the individual for the employer is performed for remuneration by way of commission;
- (5) Service performed by an individual for an employer as a real estate salesperson or as a real estate broker if all service performed by the individual for the employer is performed for remuneration by way of commission;
- (6) Service performed by an individual who, pursuant to the [Federal] federal Economic Opportunity Act of 1964, is not subject to the provisions of law relating to federal employment, including unemployment compensation; and
- (7) Domestic in-home and community-based services for persons with developmental and intellectual disabilities under the medicaid home and community-based services program pursuant to Title 42 Code of Federal Regulations sections 440.180 and 441.300, and Title 42 Code of Federal Regulations, Part 434, Subpart A, as amended, or when provided through state funded medical assistance to individuals ineligible for medicaid, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services, as the terms are defined and amended from time to time by the department of human services, performed by an individual whose services are contracted by a recipient of social service payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social service payments."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 26, 2012.)

ACT 159

H.B. NO. 2302

A Bill for an Act Relating to Capital Improvement Projects.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that temporary exemptions are necessary to expedite the construction and improvement of public housing units

and public infrastructure. Temporary exemptions achieve the dual benefits of promoting jobs in the local economy and developing valuable public assets. The repair and maintenance of vacant public housing units should reduce the turn-around time between vacating and incoming tenants, thereby resulting in an increase in the affordable housing inventory.

The purpose of this Act is to address economic revitalization by temporarily exempting from the state civil service, persons hired or contracted to repair and maintain vacant public housing units.

SECTION 2. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit

- court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
 - (11) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;
 - (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;
 - (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
 - (D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
 - (12) Employees engaged in special, research, or demonstration projects approved by the governor;
 - (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
 - (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;
 - (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
 - (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, article V, of the [Hawaii] state constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health,

- environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;
- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
 - (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
 - (19) Household employees at the official residence of the president of the University of Hawaii;
 - (20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;
 - (21) Employees hired under the tenant hire program of the Hawaii public housing authority; provided that except during the time period specified in paragraph (27), not more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
 - (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
 - (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
 - (24) The sheriff;
 - (25) A gender and other fairness coordinator hired by the judiciary; [and]
 - (26) Positions in the Hawaii national guard youth and adult education programs[-]; and
 - (27) From July 1, 2012, to June 30, 2015, persons hired or contracted to perform repair, maintenance, or capital improvement projects work on vacant housing units under the jurisdiction of the Hawaii public housing authority.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 3. (a) Upon the repeal of section 2 of this Act, an employee hired by the State pursuant to this Act may be:

- (1) Terminated; or
- (2) Retained by the respective public employer; provided that the employee shall be subject to all civil service employment requirements for the position for which the employee seeks to be retained or transferred and shall not receive any civil service experience credit for work performed while employed pursuant to this Act.

(b) The director of the public agency employing an employee subject to subsection (a) shall determine whether to terminate or retain an employee subject to this Act; provided that if the employee is to be retained, all costs associ-

ated with retaining the employee shall be covered by the public agency's existing budget.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012; provided that section 2 of this Act shall be repealed on July 1, 2015, and section 76-16(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Approved June 26, 2012.)

ACT 160

H.B. NO. 755

A Bill for an Act Relating to Public Housing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 356D-92, Hawaii Revised Statutes, is amended to read as follows:

“§356D-92 Termination and eviction. (a) Except as otherwise provided, the authority may terminate any lease, rental agreement, permit, or license covering the use and occupation of any dwelling unit or other premises located within a public housing project and evict from any premises any tenant, licensee, or other occupant for any of the following reasons:

- (1) Failure to pay rent when due;
- (2) Violation of any of the provisions of a lease, rental agreement, permit, or license;
- (3) Violation of any of the rules of the authority;
- (4) Failure to maintain the dwelling unit in a clean, sanitary, and habitable condition; or
- (5) The existence of any other circumstances giving rise to an immediate right to possession by the authority.

(b) When any tenant has been delinquent in payment of rent, the authority, either directly or through its managing agent, shall provide the tenant with a written notice [no later than forty-five days from the date of delinquency] in accordance with requirements imposed under federal law and regulation (24 C.F.R. part 966) that shall inform the tenant of the delinquency [and schedule a meeting between the tenant and the authority or its agent. The written notice shall:

- (1) Inform the tenant that continued delinquency shall result in the tenant's eviction;
- (2) Inform the tenant of the tenant's right to apply for an interim adjustment in rent;
- (3) Explain to the tenant the steps of the grievance and eviction processes and how the processes protect the tenant;
- (4) Provide the tenant with a sample letter for demanding a grievance hearing;
- (5) Set forth the location, date, and time, which shall be no earlier than fourteen days from the date of the written notice, at which the tenant may meet with the authority or its agent to discuss the delinquency in rent; and

- (6) Inform the tenant that the tenant shall either attend the meeting or, if applicable, contact the authority or the authority's agent before the meeting time to reschedule the meeting.
- (c) ~~At the meeting described in subsection (b), the authority or its agent shall:~~
 - (1) Inquire into the cause of the tenant's delinquency and offer suggestions, if any, that the authority may feel appropriate to address the causes of delinquency;
 - (2) Consider whether a reasonable payment plan is appropriate for the tenant's situation and, if appropriate, offer a payment plan to the tenant; and
 - (3) Inform the tenant of and explain the issues as required under subsection (b)(1), (2), and (3).
- (d) ~~The authority shall develop a checklist outlining all of the requirements listed in subsection (c). The authority or its agent and the tenant shall complete, sign, and date the checklist to memorialize the meeting.~~
- (e) ~~If the tenant fails to attend or reschedule the meeting provided for in subsection (b), the authority shall provide the tenant with a second written notice. The notice shall inform the tenant that:~~
 - (1) ~~The authority shall proceed to terminate the tenant's tenancy because of the tenant's outstanding rent delinquency and the tenant's failure to respond to the authority's written notice issued pursuant to subsection (b);~~
 - (2) ~~The tenant has ten business days from receipt of the second written notice to request a grievance hearing; and~~
 - (3) ~~If the tenant fails to request a grievance hearing within ten business days, the authority has the right to proceed with the eviction hearing pursuant to section 356D-93.~~
- (f) ~~If the tenant meets with the authority as provided for in subsection (b), the authority shall decide, based upon the facts discussed at the meeting, what action is appropriate to address the tenant's case. The authority shall notify the tenant of its decision in writing. If the authority decides to proceed with an action to terminate the tenancy, the authority shall further inform the tenant in the same written notice that:~~
 - (1) ~~The tenant has ten business days from receipt of this notice to request a grievance hearing; and~~
 - (2) ~~If the tenant fails to request a grievance hearing within ten business days, the authority has the right to proceed with the eviction hearing pursuant to section 356D-93]."~~

SECTION 2. Section 356D-93, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Hearings shall be conducted by an eviction board appointed by the authority. The eviction board shall consist of not fewer than ~~[three persons;]~~ one person, and no more than three persons, of which one member shall be a tenant. ~~[At least one eviction board shall be established in each county of the State.]~~ If feasible, the eviction board may conduct hearings using video conferencing technology; provided that these hearings shall be conducted pursuant to chapter 91. The findings, conclusions, decision, and order of the eviction board shall be final unless an appeal is taken as hereinafter provided."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved June 26, 2012.)

ACT 161

H.B. NO. 2540

A Bill for an Act Relating to Fees for Child Care Licensing and Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§346- Child care licensing and registration special fund. (a) There is established within the state treasury, to be administered by the department, the child care licensing and registration special fund into which shall be deposited:

- (1) All fees received from applicants for a license to operate group child care homes or group child care centers as provided in section 346-163 and from applicants for a certificate of registration for family child care homes as provided in section 346-173;
- (2) Appropriations made by the legislature to the fund; and
- (3) Any other revenues designated for the fund.

(b) Moneys in the child care licensing and registration special fund shall be used for the following purposes:

- (1) The costs of administering child care licensing and registration;
- (2) Furthering the provision of quality child care services; and
- (3) Any other purpose deemed necessary by the department to ensure the health and safety of children.

(c) All interest on special fund balances shall accrue to the credit of the special fund. Upon dissolution of the child care licensing and registration special fund, any unencumbered moneys in the fund shall lapse to the credit of the general fund.”

SECTION 2. Section 346-163, Hawaii Revised Statutes, is amended to read as follows:

“§346-163 Licenses and temporary permits. (a) If satisfied that the applicant meets the minimum standards established pursuant to section 346-162 and subject to the criminal history record checks and child abuse record checks of section 346-154, the department shall grant the applicant a license for the operation of a group child care home or group child care center, as the case may be. The license shall be valid for:

- (1) One year for new applicants and for those who have been licensed for less than four years; and
- (2) Two years for those who have been licensed for four years or more,

unless sooner revoked. Where the activities of the applicant fall within the licensing requirements of the department of education and this subpart, a license shall be required from both the department of education and the department of human services.

A temporary permit may be issued for a period of six months at the department’s discretion to any applicant who is temporarily unable to conform to

all of the minimum standards. Renewal of the temporary permit shall be left to the department's discretion; provided that the combined period of the initial and subsequently renewed permits shall not exceed twenty-four months. Licenses and permits shall be conspicuously posted on the licensed premises.

(b) The department may establish reasonable fees for the issuance or renewal of licenses and permits according to rules adopted pursuant to chapter 91."

SECTION 3. Section 346-173, Hawaii Revised Statutes, is amended to read as follows:

"[§346-173] Procedure for registration. (a) A person desiring to have the person's home registered as a family child care home shall make application to the department. Upon receipt of the application, the department shall conduct a study of the applicant's qualifications, home, and proposed operation. The department shall issue a certificate of registration to the applicant which authorizes the applicant to operate a family child care home if the department is satisfied that the premises and proposed operation will be in compliance with the minimum requirements established under section 346-172 and subject to the criminal history record checks under section 346-154.

The provider shall operate and maintain the premises of the family child care home in accordance with the minimum requirements established under section 346-172 so long as registered.

(b) The department may establish reasonable fees for the issuance or renewal of certificates of registration according to rules adopted pursuant to chapter 91."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 26, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 162

S.B. NO. 2821

A Bill for an Act Relating to Mortality Review of Deaths of Persons With Developmental or Intellectual Disabilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . MORTALITY REVIEW OF DEATHS OF PERSONS WITH DEVELOPMENTAL OR INTELLECTUAL DISABILITIES

§321- Multidisciplinary and multiagency mortality reviews. The department may conduct multidisciplinary and multiagency mortality reviews of deaths of persons with developmental or intellectual disabilities in order to re-

duce the incidence of preventable deaths to persons with developmental or intellectual disabilities.

§321- Definitions. As used in this part:

“Adult” means a person eighteen years of age or older.

“Adult death review information” means information regarding the adult person and person’s family, including:

- (1) Social, medical, and legal histories;
- (2) Death and birth certificates;
- (3) Law enforcement investigative data;
- (4) Medical examiner or coroner investigative data;
- (5) Parole and probation information and records;
- (6) Information and records of social service agencies;
- (7) Educational records; and
- (8) Health care institution information.

“Department” means the department of health.

“Developmental disability” means a severe, chronic disability of a person that:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (i) Self-care;
 - (ii) Receptive and expressive language;
 - (iii) Learning;
 - (iv) Mobility;
 - (v) Self-direction;
 - (vi) Capacity for independent living; and
 - (vii) Economic self-sufficiency; and
- (5) Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

“Director” means the director of health or the director’s designated representative.

“Intellectual disability” means significantly subaverage general intellectual functioning resulting in or associated with concurrent moderate, severe, or profound impairments in adaptive behavior and manifested during the developmental period.

“Person with developmental or intellectual disabilities” means an adult with a developmental or intellectual disability.

“Preventable death” means a death that reasonable medical, social, legal, psychological, or educational intervention may have prevented.

“Provider of medical care” means any health care practitioner who provides, or a facility through which is provided, any medical evaluation or treatment, including dental and mental health evaluation or treatment.

§321- Access to information. (a) Upon written request of the director, all providers of medical care or other related services and state and county agencies shall disclose to the department and to those individuals appointed by the director to participate in the mortality review of the death of a person with developmental or intellectual disabilities, adult death review information

regarding the circumstances of the death of a person with developmental or intellectual disabilities to allow the department to conduct multidisciplinary and multiagency mortality review of deaths of persons with developmental or intellectual disabilities pursuant to section 321-31 and this part.

(b) To the extent that this section conflicts with other state confidentiality laws, this section shall prevail.

§321- Exception. Information regarding an ongoing civil or criminal investigation shall be disclosed at the discretion of the applicable state, county, or federal law enforcement agency.

§321- Use of information and records from mortality reviews of deaths of persons with developmental or intellectual disabilities. (a) Except as otherwise provided in this part, all information and records acquired by the department during its multidisciplinary and multiagency mortality reviews of deaths of persons with developmental or intellectual disabilities pursuant to this part shall be kept confidential and may be disclosed only as necessary to carry out the purposes of this part.

(b) Information and statistical compilations of data from the multidisciplinary and multiagency mortality reviews of deaths of persons with developmental or intellectual disabilities that do not contain any information that would permit the identification of any person shall be public records.

(c) No individual participating in the department's multidisciplinary and multiagency mortality review of the death of a person with developmental or intellectual disabilities may be questioned in any civil or criminal proceeding regarding information presented in, or opinions formed as a result of, a meeting of the multidisciplinary and multiagency mortality review of deaths of persons with developmental or intellectual disabilities. Nothing in this subsection shall be construed to prevent a person from testifying to information obtained independently of the department's multidisciplinary and multiagency mortality review of deaths of persons with developmental or intellectual disabilities, or that is public information, or where disclosure is required by law or court order.

(d) Information held by the department as a result of a multidisciplinary and multiagency mortality review of the death of a person with developmental or intellectual disabilities conducted under this part shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that information otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because it was provided as required by this part.

§321- Immunity from liability. All agencies and individuals participating in multidisciplinary and multiagency mortality reviews of deaths of persons with developmental or intellectual disabilities pursuant to this part shall not be held civilly or criminally liable for providing the information required under this part."

SECTION 2. This Act shall take effect upon its approval.

(Approved June 26, 2012.)

ACT 163

S.B. NO. 2800

A Bill for an Act Relating to Exemptions From Child Care Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-152, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Nothing in this part shall be construed to include:
- (1) A person caring for children related to the caregiver by blood, marriage, or adoption;
 - (2) A person, group of persons, or facility caring for a child less than six hours a week;
 - (3) A kindergarten, school, or child care program licensed by the department of education[;], the charter school review panel, the Hawaii council of private schools, or any federal agency;
 - (4) A program that provides exclusively for a specialized training or skill development for children, including but not limited to programs providing activities such as athletic sports, foreign language, the Hawaiian language, dance, drama, music, or martial arts;
 - (5) A multiservice organization or community association, duly incorporated under the laws of the State that operates for the purpose of promoting recreation, health, safety, or social group functions for eligible pupils in public and private schools through seventeen years of age;
 - (6) Programs for children four years of age and older that operate for no more than two consecutive calendar weeks in a three-month period;
 - (7) A provider agency operating or managing a homeless facility or any other program for homeless persons authorized under part XVII;
 - (8) After-school, weekend, and summer recess programs conducted by the department of education pursuant to section 302A-408;
 - (9) Child care programs ~~[for children five years of age and older]~~ conducted by counties pursuant to section 302A-408; provided that each county adopts rules for its programs;
 - (10) Any person who enters a home in a child caring capacity and only cares for children who are of that household; and
 - (11) A person caring for two or fewer children unrelated to the caregiver by blood, marriage, or adoption.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2013.

(Approved June 26, 2012.)

ACT 164

H.B. NO. 1398

A Bill for an Act Relating to the Hawaii Public Housing Authority.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the development of additional public housing is essential to the well-being of Hawaii's poorest residents. The

ability of the State to provide an adequate supply of safe, affordable public housing can be enhanced by public-private partnerships that authorize private entities to undertake all or a portion of the study, planning, design, development, financing, acquisition, installation, construction, improvement, operation, or maintenance of public housing facilities. Public-private partnership public housing projects provide a sound economic investment opportunity for the private sector and the State with increased options to develop this critically needed housing.

The purpose of this Act is to encourage joint ventures with private parties for the development of public housing.

SECTION 2. Chapter 356D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§356D- Development of property; partnership or development agreement. (a) Any public housing project may be developed under sections 356D-11 and 356D-12 by the authority in partnership or under a development agreement with a private party; provided that a written partnership or development agreement is executed by the authority. At a minimum, the partnership or development agreement shall provide for:

- (1) A determination by the authority that the partnership or development agreement is for a public purpose; and
- (2) Final approval by the authority of the plans and specifications for the public housing project.

(b) For the development of public housing projects pursuant to subsection (a), except as provided by federal law or regulation, the authority shall not be subject to chapters 103 and 103D or any and all other requirements of law for competitive bidding for partnership or development agreements, construction contracts, or other contracts; provided that the authority shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices.

(c) The authority shall submit an annual report to the legislature, no later than twenty days prior to the convening of each regular session, on the status of all public housing projects being developed using partnership or development agreements pursuant to subsection (a).

(d) The authority may adopt rules pursuant to chapter 91 necessary for the purposes of this section.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved June 26, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Interisland Electric Transmission Cable Systems.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that attaining energy independence from imported fossil fuels is a long-standing objective of the State.

The legislature finds that interconnecting the islands via a high-voltage undersea electric transmission cable system would provide the islands with increased energy security and system efficiencies and enable the islands to provide each other with backup power.

The legislature further finds that interconnection would enable Hawaii to make better use of its abundant natural renewable energy resources such as wind, solar, and geothermal energy. An interisland undersea cable system has been identified as an effective and efficient means to introduce the variety of utility scale renewable energy available throughout the Hawaiian islands into a stable grid environment; to stabilize and equalize rates in all areas served by the cable; to increase Hawaii's energy independence; to support "increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased" and "greater energy security and diversification in the face of threats to Hawaii's energy supplies and systems"; and to support the achievement of the renewable portfolio standards established in section 269-92, Hawaii Revised Statutes, which requires twenty-five per cent of Hawaii's net electricity sales to come from renewable sources by 2020, increasing to forty per cent by 2030.

Despite these predicted benefits, none of the electric utility systems on any of the Hawaiian islands is interconnected with electric utility systems on any other island.

The purpose of this Act is to establish the regulatory structure under which interisland undersea transmission cables can be developed, financed, and constructed on commercially reasonable terms, such as those upon which successful cable projects have been undertaken in several locations around the world. Nothing in this Act is intended to require the construction of an interisland cable from any particular island.

This Act also amends other sections of the Hawaii Revised Statutes to reflect the existence of a separate and distinct entity transmitting power to and receiving revenue from an existing electric utility that is not owned or controlled by that electric utility.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . INTERISLAND TRANSMISSION SYSTEM

§269-A Definitions. As used in this part:

"Cable acquisition cost" means the electric utility company's costs, including reasonable transaction costs, to acquire a high-voltage electric transmission cable system pursuant to a turnkey cable contract or a cable purchase contract.

"Cable company" means any person or persons, company, corporation, or entity that is selected through a request for proposals, or other process approved by the commission, to be a certified cable company applicant.

"Certified cable company" means any person or persons, company, corporation, or entity who owns or controls a high-voltage electric transmission

cable system and who receives a certificate of public convenience and necessity from the commission pursuant to section 269-B.

“Commercial operations” means the period after the high-voltage electric transmission cable system:

- (1) Passes acceptance tests approved by the commission, as determined by a qualified independent engineer approved by the commission; and
- (2) Meets other criteria the commission determines to be reasonable.

“Commercial operations date” means the date upon which the high-voltage electric transmission cable system begins commercial operations, as determined by the commission.

“Commission” means the public utilities commission.

“Cost-effective” has the same meaning as in section 269-91.

“Electric utility company” means a public utility as defined in section 269-1, for the production, conveyance, transmission, delivery, or furnishing of electric power.

“Electric utility system” means the electric system owned and operated by an electric utility company, including any non-utility owned facilities that are interconnected to the system, consisting of power plants, transmission and distribution lines, and related equipment for the production and delivery of electric power to the public.

“Energy resources coordinator” or “coordinator” means the director of business, economic development, and tourism.

“High-voltage electric transmission cable system” means one hundred twenty kilovolts or greater of alternating current or direct current transmission cables constructed undersea, including connected transmission cables or lines installed on land that connect the electric utility systems on two or more islands or allow for the transmission of power from one or more energy generation facilities to the electric utility system located on another island of the State; alternating current substation or alternating current-direct current converter station; on-island transmission infrastructure if required; fiber optic communication cables; and other appurtenant facilities.

“On-island transmission infrastructure” means the modifications and additions to the existing alternating current transmission grid on an island and other electric utility system modifications needed to reliably connect a high-voltage electric transmission cable system to an electric utility system, and to reliably accept power transmitted via the high-voltage electric transmission cable system connecting two or more islands of the State’s electric utility systems.

“Power purchase agreement” means an agreement between an electric utility company and the developer of an energy generation facility to sell the power generated by the facility to the electric utility company.

“Project-on-project financing risk” means the risk involved when mutually dependent projects, whose risk of completion, and therefore, financing, are dependent on each other.

“Renewable electricity” means electrical energy generated using renewable energy as the source.

“Renewable energy” has the same meaning as in section 269-91.

“Renewable energy generation facility” means a facility generating electrical energy using renewable energy as the primary source.

“Renewable portfolio standard” has the same meaning as in section 269-91.

“Request for proposals” means a request for proposals issued pursuant to a competitive process authorized, reviewed, and approved by the commission, and developed and conducted by the electric utility company or companies to which the capacity of a high-voltage electric transmission cable system will be

made available, with input and assistance from the state energy resources coordinator, to select a cable company.

§269-B Certification. (a) Prior to installing a high-voltage electric transmission cable system, a cable company shall be selected through a request for proposals, or other process approved by the commission. The selected cable company shall not commence commercial operations of the high-voltage electric transmission cable system until it is issued a certificate of public convenience and necessity by the commission pursuant to section 269-7.5. A certified cable company shall be subject to regulation by the commission and defined as a "public utility" under section 269-1, notwithstanding any law to the contrary.

(b) The electric utility company and the energy resources coordinator, or the energy resources coordinator's designee, shall develop the request for proposals, and the energy resources coordinator or the energy resources coordinator's designee shall be a member of the selection committee that will review and evaluate the proposals. The electric utility company shall suspend or terminate the request for proposals at the discretion of the commission.

- (c) Notwithstanding any provisions in section 269-7.5 to the contrary:
 - (1) The commission shall approve, disapprove, or approve subject to certain conditions, an application for a certificate of public convenience and necessity for a high-voltage electric transmission cable system, and shall issue a final order within one hundred eighty days after the application is filed, provided that the commission may extend the timeline as necessary;
 - (2) In determining whether the cable company is financially fit, the commission may allow for the use of commercially reasonable non-recourse project financing for the high-voltage electric transmission cable system;
 - (3) In determining whether the proposed transmission capacity service is or will be required by the present or future public convenience and necessity, the commission shall determine whether the high-voltage electric transmission cable system would be a cost-effective means of:
 - (A) Interconnecting two or more electric utility systems;
 - (B) Helping one or more electric utility companies meet the applicable renewable portfolio standard; or
 - (C) Achieving other considerations the commission may deem appropriate;
 - (4) If the primary source or sources of the renewable electricity that will be transmitted to an electric utility company or companies using the high-voltage electric transmission cable system will be provided pursuant to a power purchase agreement or agreements between the electric utility company or companies and an owner or owners of a new renewable energy generation facility or facilities, in reviewing and approving the application for a certificate of public convenience and necessity, the commission shall, among other factors, take into consideration:
 - (A) The status of the power purchase agreement or agreements;
 - (B) The extent to which the project-on-project financing risk of the high-voltage electric transmission cable system and the associated renewable energy generation facilities is materially reduced through agreements between the certified cable company and the owner or owners of the renewable energy generation

- facilities holding the power purchase agreement or agreements, or through common ownership arrangements; and
- (C) The extent to which the certified cable company assumes financial responsibility for the high-voltage electric transmission cable system until both the cable system and the new generation facility or facilities have achieved commercial operations;
 - (5) In the certification process, the commission shall review and determine ratemaking principles appropriate and applicable to the high-voltage electric transmission cable system during commercial operations. The ratemaking principles shall be used in determining the certified cable company's revenue requirement that is used to determine its transmission capacity charges, and may be used to fix the capital investment costs for the high-voltage electric transmission cable system upon which the certified cable company will be allowed to earn an authorized rate of return and the operating costs that may be included in the certified cable company's revenue requirement. Any applicable land costs shall be included in the determination of the certified cable company's revenue requirement;
 - (6) In determining the authorized rate of return that will apply to a certified cable company, the commission may consider the risks assumed by the certified cable company related to or resulting from the planning, financing, construction, and operation of the high-voltage electric transmission cable system, including other factors deemed relevant and appropriate by the commission, such as the terms and conditions of the transmission tariff as may be approved by the commission; and
 - (7) Prior to approving the application for a certificate of public convenience and necessity, the commission shall hold a public hearing on each island to be connected by the high-voltage electric transmission cable system to obtain input from the affected communities about the high-voltage electric transmission cable system.

§269-C Transmission tariff. The commission shall, by order, approve, disapprove, or approve subject to certain conditions, the tariff of the certified cable company pursuant to which the certified cable company shall make the capacity of its high-voltage electric transmission cable system available to the electric utility company or companies. The tariff shall be consistent with the tariff provisions provided in the request for proposals, unless otherwise ordered by the commission. The tariff shall specify the terms and conditions under which the certified cable company will be entitled to receive revenues collected through the cable surcharge, established pursuant to section 269-D. The certified cable company may submit its proposed tariff for approval prior to the expected commercial operations date, and the commission shall take final action on the proposed tariff within one hundred twenty days after submittal of the proposed tariff with supporting documentation as may be required by the commission; provided that the commission may extend the timeline as necessary.

§269-D Cable surcharge. (a) The commission shall establish a cable surcharge to allow recovery of the high-voltage electric transmission cable system costs designated for recovery according to the ratemaking principles pursuant to section 269-B.

(b) Pursuant to the transmission tariff, the commission shall, by order, designate the electric utility company or companies to which the capacity of the high-voltage electric transmission cable system shall be made available as the

agent of the certified cable company to collect the cable surcharge approved by the commission. The electric utility company or companies collecting the cable surcharge for the benefit of the certified cable company shall have no right, title, or interest in the moneys so collected. The commission shall approve a fee, to be collected by the electric utility company or companies concurrently with the cable surcharge, for acting as the collection agent for the certified cable company.

(c) Notwithstanding any requirements to the contrary, a high-voltage electric transmission cable system may be deemed "used or useful for public utility purposes" upon commencing commercial operations, subject to the commission's determination and approval.

§269-E Recovery of electric utility company costs. (a) An electric utility company may recover, through an automatic rate adjustment clause, its revenue requirement resulting from the capital costs that it prudently incurs for on-island transmission infrastructure; provided that the commission has approved the utility's commitment of capital expenditure costs for the project.

(b) To provide for timely recovery of the revenue requirement, the commission shall establish a separate automatic rate adjustment clause for that purpose, or modify an existing automatic rate adjustment clause. The use of the automatic rate adjustment clause to recover the revenue requirement shall be allowed to continue until the revenue requirement is incorporated in rates in an electric utility company's rate case.

(c) The electric utility company's revenue requirement shall include:

- (1) The commission-approved rate of return, as set in the electric utility company's last rate case, on the utility's net investment in the high-voltage electric transmission cable system from the acquisition date of the high-voltage electric transmission cable system, and in the on-island transmission infrastructure from the date the on-island transmission infrastructure is completed and available for service;
- (2) Depreciation; and
- (3) Revenue taxes and other relevant costs as approved by the commission.

(d) The electric utility company's net investment includes costs incurred by the electric utility for planning, permitting, and constructing the on-island transmission infrastructure, including an allowance for funds used during construction where the utility finances the planning, permitting, and construction costs, less offsets such as accumulated depreciation and associated unamortized deferred income taxes.

(e) The on-island transmission infrastructure shall be available for service before the commercial operations date of the high-voltage electric transmission cable system. Notwithstanding any other provision in this chapter to the contrary, at the time the commission approves the electric utility company's commitment of capital expenditure costs for the project, the commission may either:

- (1) Allow the electric utility company to recover its approved revenue requirement resulting from the capital costs that it prudently incurs for on-island infrastructure at the time that the infrastructure is available for service; or
- (2) Allow the company to continue to accrue an allowance for funds used during construction on such prudently incurred capital costs until the commercial operations date for the high-voltage electric transmission system.

(f) If the electric utility company elects not to complete the on-island transmission infrastructure, and the commission approves this election, or the

electric utility company is precluded from completing construction of the on-island transmission infrastructure, the electric utility company shall be allowed to recover reasonable costs determined by the commission to have been prudently incurred by the electric utility company with respect to the on-island transmission infrastructure. The electric utility company shall be allowed by the commission to recover the reasonable costs through the cable surcharge over a period equal to the period during which the costs were incurred or five years, whichever is greater."

SECTION 3. Chapter 239, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§239- Cable surcharge amounts exempt. Amounts received in the form of a cable surcharge by an electric utility company acting on behalf of a certified cable company under section 269-D shall not be deemed gross income of that electric utility company for purposes of this chapter; provided that any amounts retained by that electric utility company for collection or other costs shall not be included in this exemption."

SECTION 4. Chapter 240, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§240- Cable surcharge amounts exempt. Amounts received in the form of a cable surcharge by an electric utility company acting on behalf of an affected certified cable company under section 269-D shall not be deemed gross receipts for that electric utility company for purposes of this chapter; provided that any amounts retained by that electric utility company for collection or other costs shall not be included in this exemption."

SECTION 5. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be excluded from gross income, adjusted gross income, and taxable income:

- (1) Income not subject to taxation by the State under the Constitution and laws of the United States;
- (2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
- (3) Any compensation received in the form of a pension for past services;
- (4) Compensation paid to a patient affected with Hansen's disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen's disease;
- (5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
- (6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it be-

- ing the intent of this chapter not to repeal or supersede any express exemption or exclusion;
- (7) Income received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty, equivalent to pay received for forty-eight drills (equivalent of twelve weekends) and fifteen days of annual duty, at an:
 - (A) E-1 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2004;
 - (B) E-2 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2005;
 - (C) E-3 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2006;
 - (D) E-4 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2007; and
 - (E) E-5 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2008;
 - (8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country; provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft that are documented or registered under the laws of the United States;
 - (9) The value of legal services provided by a prepaid legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
 - (10) Amounts paid, directly or indirectly, by a prepaid legal service plan to a taxpayer as payment or reimbursement for the provision of legal services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
 - (11) Contributions by an employer to a prepaid legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents;
 - (12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 ~~[shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any]~~; provided that amounts retained by the acting utility for collection or other costs shall not be included in this exemption; [and]
 - (13) Amounts received in the form of a cable surcharge by an electric utility company acting on behalf of a certified cable company under section 269-D; provided that any amounts retained by that electric utility company for collection or other costs shall not be included in this exemption; and
 - [(13)] (14) One hundred per cent of the gain realized by a fee simple owner from the sale of a leased fee interest in units within a condominium

project, cooperative project, or planned unit development to the association of owners under chapter 514A or 514B, or the residential cooperative corporation of the leasehold units.

For purposes of this paragraph:

“Fee simple owner” shall have the same meaning as provided under section 516-1; provided that it shall include legal and equitable owners;

“Legal and equitable owner”, and “leased fee interest” shall have the same meanings as provided under section 516-1; and

“Condominium project” and “cooperative project” shall have the same meanings as provided under section 514C-1.”

SECTION 6. Section 269-30, Hawaii Revised Statutes, is amended to read as follows:

“§269-30 Finances; public utility fee. (a) Sections 607-5 to 607-9 shall apply to the public utilities commission and each commissioner, as well as to the supreme and circuit courts, and all costs and fees paid or collected pursuant to this section shall be deposited with the director of finance to the credit of the public utilities commission special fund established under section 269-33.

(b) There also shall be paid to the public utilities commission in each of the months of July and December of each year, by each public utility subject to investigation by the public utilities commission, a fee equal to one-fourth of one per cent of the gross income from the public utility’s business during the preceding year, or the sum of \$30, whichever is greater. This fee shall be deposited with the director of finance to the credit of the public utilities commission special fund.

(c) Each public utility paying a fee under subsection (b) may impose a surcharge to recover the amount paid above one-eighth of one per cent of gross income. The surcharge imposed shall not be subject to the notice, hearing, and approval requirements of this chapter; provided that the surcharge may be imposed by the utility only after thirty days’ notice to the public utilities commission. Unless ordered by the public utilities commission, the surcharge shall be imposed only until the conclusion of the public utility’s next rate case; provided that the surcharge shall be subject to refund with interest at the public utility’s authorized rate of return on rate base if the utility collects more money from the surcharge than actually paid due to the increase in the fee to one-fourth of one per cent.

(d) Notwithstanding any provision of this chapter to the contrary, the public utilities commission may, upon the filing of a petition by a public utility, credit a public utility for amounts paid under subsection (b) toward amounts the public utility owes in one call center fees under section 269E-6(f).

(e) Amounts received in the form of a cable surcharge by an electric utility company acting on behalf of a certified cable company under section 269-D shall not be deemed gross income for that electric utility company for purposes of this section; provided that any amounts retained by that electric utility company for collection or other costs shall not be included in this exemption.”

SECTION 7. In codifying the new sections added to chapter 269, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on July 1, 2012; provided that the amendments made to section 235-7, Hawaii Revised Statutes, in section 5 of this Act shall not be repealed when that section is reenacted on January 1, 2013, pursuant to Act 166, Session Laws of Hawaii 2007.

(Approved June 27, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 166

S.B. NO. 2787

A Bill for an Act Relating to Electricity.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the capability and accessibility of Hawaii's electrical system must be aligned with both the State's ambitious renewable portfolio standard mandate and the various technologies that generate electricity at both the distribution and transmission levels. Localized energy generation technology has become increasingly attainable for all types of renewable energy developers and the electricity consumer over the past several years. A highly diverse set of generation resources ranging from large wind projects to simple residential photovoltaic systems are now primed to deliver electricity to consumers across the State's isolated island grids. However, in order to ensure that these types of generation resources can be integrated into the island grids, the technical, operational, and regulatory issues associated with running the electrical system must be considered and addressed in order to achieve the full potential of local renewable energy production. The implementation of formal reliability standards to govern all segments of the electric power system and to ensure fair and transparent grid access is a critical part of achieving Hawaii's lofty clean energy requirements. In addition, clear regulatory oversight of the State's grids will ensure system reliability, resiliency, and accountability.

Reliability standards are formal planning and operating procedures that govern the design and operation of an electrical grid or grids to ensure adequate system reliability by establishing real-time protocols, such as resource and demand balancing, critical infrastructure protection, and interconnection reliability. The legislature finds that electric system planning, operations, and interconnections on the mainland United States are governed by a well-coordinated effort headed by the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation, with help from a group of subordinate regional oversight entities. Under federal commission oversight, the corporation and the regional oversight entities collectively create and adopt national and regional reliability standards, administer related compliance and enforcement programs, and perform other additional functions as needed to ensure that all entities operating in connection to the bulk-power system follow applicable standards. Although Hawaii is not part of the bulk-power system that links the vast grid regions of North America, our local electrical system still requires a level of reliability protocols and oversight provided by a set of local standards and an accompanying enforcement system that is commensurate with the State's ambitious renewable energy mandates.

The public utilities commission continues to advance the development of local grid reliability standards and procedures via ongoing proceedings connected to Hawaii's feed-in tariff program and other interconnection-related dockets. The Hawaii reliability standards working group is developing proposed reliability standards tailored to Hawaii's electrical system. Following commission adoption of reliability standards, a dedicated body will be required to enforce and oversee compliance with the standards. However, the legislature finds the commission's efforts in this area are the result of a lack of formal, well-developed reliability standards and interconnection requirements in Hawaii that have been identified as a principal roadblock for a number of large- and small-scale clean energy projects. In addition, a number of major government and private renewable energy projects are currently slated for development in the near future, including military solar installations estimated to create hundreds of megawatts of new electricity generation on Oahu by the middle of this decade, which further necessitates the adoption of strong, formalized reliability standards and interconnection requirements. Following the creation of initial standards and requirements, a well-organized, continuing effort to enforce the adopted standards and requirements, propose new or update existing standards, and oversee grid access and operation will be required.

The purpose of this Act is to authorize the public utilities commission to perform necessary electric system reliability and grid access oversight functions, and to allow the commission to contract for the services of a Hawaii electricity reliability administrator to support the commission in carrying out those critical functions throughout the State. In addition, this Act allows for the creation of a surcharge affecting users, owners, and operators of the Hawaii electric system to be collected for the purpose of maintaining system reliability.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . ELECTRIC RELIABILITY

§269-A Definitions. As used in this part:

“Ancillary services” means those essential grid support services provided by a facility, or other equipment to support and ensure the reliable generation, transmission, and distribution of electricity, including frequency response and regulation, inertial response, reactive power and voltage control, and operating reserves.

“Commission” means the public utilities commission.

“Electric element” means any plant, line, cable, facility, control system, equipment, or other technology used for the generation, transmission, distribution, storage, regulation, or physical control of electricity.

“Hawaii electric system” means all electric elements located within the State together with all interconnections located within the State that collectively provide for the generation, transmission, distribution, storage, regulation, or physical control of electricity over a geographic area; provided that this term shall not include any electric element operating without any interconnection to any other electric element located within the State.

“Interconnection” means the physical contact point connecting an electric element to another electric element or group of electric elements that allows for the flow and transfer of electricity between electric elements.

“Interconnection requirement” means a standard or rule, adopted by the commission under this part, concerning the performance levels, processes, practices, equipment, or facilities of any entity either having or seeking to obtain

an interconnection to the Hawaii electric system under procedures established pursuant to section 269-E to ensure the reliable operation of the Hawaii electric system.

“Reliability standard” means an electric reliability requirement or requirements, adopted by the commission under this part, to ensure the reliable design and operation of any or all portions of the Hawaii electric system, including but not limited to ancillary service requirements.

“User, owner, or operator of the Hawaii electric system” means any person, business, organization, or other entity who:

- (1) Owns, controls, operates, or manages plants or facilities for the generation, transmission, or furnishing of electricity; and
- (2) Provides, sells, or transmits all of that electricity, except such electricity as is used in its own internal operations or is used for its own consumption, directly to a public utility for either transmission or distribution to the public;

provided that a user, owner, or operator of the Hawaii electric system shall not be considered a public utility for the purposes of this chapter.

§269-B Reliability standards; interconnection requirements; adoption and development; force and effect. (a) The commission may adopt, by rule or order, reliability standards and interconnection requirements. Reliability standards and interconnection requirements adopted by the commission shall apply to any electric utility and any user, owner, or operator of the Hawaii electric system. The commission shall not contract for the performance of the functions under this subsection to any other entity as provided under section 269-G.

(b) The commission may develop reliability standards and interconnection requirements as it determines necessary or upon recommendation from any entity, including an entity contracted by the commission to serve as the Hawaii electricity reliability administrator provided for under this part, for the continuing reliable design and operation of the Hawaii electric system. Any reliability standard or interconnection requirement developed by the commission shall be adopted by the commission in accordance with subsection (a) in order to be effective. The commission shall not contract for the performance of the functions under this subsection to any other entity as provided under section 269-G.

(c) The commission shall have jurisdiction over matters concerning interconnection requirements and interconnections located in the State between electric utilities, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system or otherwise applying to connect generation or equipment providing ancillary services to, or operate generation and equipment providing ancillary services in parallel with the Hawaii electric system under processes established in accordance with section 269-E. Nothing in this subsection is intended to give the commission general supervision authority over any user, owner, or operator of the Hawaii electric system or any other person, business, or entity that is not a public utility as defined in section 269-1.

§269-C Monitoring. (a) The commission shall have the authority to monitor the reliability and operation of the Hawaii electric system using any data, files, maps, reports, or any other information concerning any electric utility, any user, owner, or operator of the Hawaii electric system, or any person, business, or entity connecting to the Hawaii electric system, considered by the commission to be necessary for ensuring the reliable operation of the Hawaii electric system. The authority of the commission to monitor information in this section shall include the authority to request, acquire, or otherwise accumulate

real-time data on any matter the commission deems necessary to monitor the reliable design and operation of the Hawaii electric system.

(b) The commission shall have the authority to monitor and compel the production of data, files, maps, reports, or any other information concerning any electric utility, any user, owner, or operator of the Hawaii electric system, or other person, business, or entity, considered by the commission to be necessary for exercising jurisdiction over interconnection to the Hawaii electric system, or for administering the process for interconnection to the Hawaii electric system under section 269-E.

(c) Any and all data, files, maps, reports, or any other information the commission requests under subsection (a) or (b) shall be produced in a timely manner. The commission may institute proceedings in accordance with section 269-15 upon a determination that any party for or on behalf of an electric utility, any other user, owner, or operator of the Hawaii electric system, or other person, business, or entity, has refused to provide or is causing unreasonable delay or expense in providing information requested under this section.

§269-D Compliance and enforcement. (a) The commission shall take all necessary steps, including audits, spot checks, data requests, report requests, and internal monitoring procedures, to ensure that any electric utility, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system is in compliance with all adopted reliability standards and interconnection requirements, as appropriate.

(b) The commission may impose reasonable penalties on any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system acting in violation of an adopted reliability standard after notice as provided under section 269-12 and an opportunity for a proceeding under section 269-15 has been given.

(c) The commission shall adopt rules pursuant to chapter 91 for the issuance of any penalty under this section. In adopting rules, the commission may make provisions for the Hawaii electric reliability administrator to recommend penalties and enforcement to the commission.

§269-E Grid access; procedures for interconnection; dispute resolution. (a) Each user, owner, or operator of the Hawaii electric system, or any other person, business, or entity seeking to make an interconnection on the Hawaii electric system shall do so in accordance with procedures to be established by the commission by rule or order.

(b) The commission shall have the authority to make final determinations regarding any dispute between any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system, concerning either an existing interconnection on the Hawaii electric system or an interconnection to the Hawaii electric system created under the processes established by the commission under this section.

§269-F Hawaii electricity reliability surcharge; authorization; cost recovery. (a) The commission may require, by rule or order, that all utilities, persons, businesses, or entities connecting to the Hawaii electric system, or any other user, owner, or operator of any electric element that is a part of an interconnection on the Hawaii electric system shall pay a surcharge that shall be collected by Hawaii's electric utilities. The commission shall not contract or otherwise delegate the ability to create the Hawaii electricity reliability surcharge under this section to any other entity. This surcharge amount shall be known as the Hawaii electricity reliability surcharge.

(b) Amounts collected through the Hawaii electricity reliability surcharge shall be transferred in whole or in part to any entity contracted by the commission to act as the Hawaii electricity reliability administrator provided for under this part.

(c) The Hawaii electricity reliability surcharge shall be used for the purposes of ensuring the reliable operation of the Hawaii electric system and overseeing grid access on the Hawaii electric system through the activities of the Hawaii electricity reliability administrator contracted under section 269-G; provided that amounts collected under the Hawaii electricity reliability surcharge shall not be available to meet any current or past general obligations of the State.

(d) The commission may allow an electric utility to recover appropriate and reasonable costs under the Hawaii electricity reliability surcharge for any interconnection to the Hawaii electric system, including interconnection studies and other analysis associated with studying the impact or necessary infrastructure and operational requirements needed to reliably interconnect a generator, as well as from electric utility customers through a surcharge or assessment subject to review and approval by the commission under section 269-16.

(e) Nothing in this section shall create or be construed to cause amounts collected through the Hawaii electricity reliability surcharge to be considered state or public moneys subject to appropriation by the legislature or be required to be deposited into the state treasury.

§269-G Hawaii electricity reliability administrator; contracting. (a) The commission may contract for the performance of its functions under this part with a person, business, or organization, except for a public utility as defined under this chapter, that will serve as the Hawaii electricity reliability administrator provided for under this part; provided that the commission shall not contract for the performance of its functions under sections 269-B(a) and (b) and 269-F.

(b) Any entity contracted by the commission to serve as the Hawaii electricity reliability administrator under this section shall be selected by the commission in accordance with state law, including chapter 103D. The Hawaii electricity reliability administrator, if so enabled by the commission through mutual agreement under the laws of the State of Hawaii, shall hold the powers and rights delegated by the commission under this part for the term of the executed contract; provided that the commission shall retain full authority over the Hawaii electricity reliability administrator and the exclusive authority to carry out functions and responsibilities enumerated under sections 269-B(a) and (b) and 269-F.

§269-H Hawaii electricity reliability administrator; qualifications. Any entity contracted by the commission to serve as the Hawaii electricity reliability administrator shall:

- (1) Satisfy the qualification requirements established by the commission by rule or order;
- (2) Maintain reasonable and necessary staffing with appropriate skills and expertise to offer prudent and reasonable recommendations on the development of reliability standards and interconnection requirements adopted by the commission under this part, including the technical skills required to properly monitor operations of the Hawaii electric system using information provided under section 269-C; and
- (3) Maintain reasonable and necessary staffing with an appropriate level of independence to fairly and impartially review matters con-

cerning interconnection to the Hawaii electric system under section 269-E, including independence of the entity from any electric utility, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system.

§269-I Funding; reporting. (a) The Hawaii electricity reliability administrator shall use funds collected through the Hawaii electricity reliability surcharge provided for under section 269-F to carry out its operations, including administrative, technological, or other related requirements for effectively ensuring the reliability of the Hawaii electric system.

(b) The Hawaii electricity reliability administrator shall report to the commission each year on the date of agreement under section 269-G following the original contracting between the Hawaii electricity reliability administrator and the commission on the status of its operations, financial position, and a projected operational budget for the fiscal year following the date of the report.

(c) The Hawaii electricity reliability administrator shall be subject to regulation by the commission under any provision applicable to a public utility in sections 269-7, 269-8, 269-8.2, 269-8.5, 269-9, 269-10, 269-13, 269-15, 269-19.5, and 269-28. Notwithstanding any other provision of law to the contrary, the Hawaii electricity reliability administrator shall not be an electric public utility or an electric public utility affiliate."

SECTION 3. Section 269-1, Hawaii Revised Statutes, is amended by amending the definition of "public utility" to read as follows:

"“Public utility”:

- (1) Includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use for the transportation of passengers or freight; for the conveyance or transmission of telecommunications messages; for the furnishing of facilities for the transmission of intelligence by electricity within the State or between points within the State by land, water, or air; for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil; for the storage or warehousing of goods; or for the disposal of sewage; provided that the term shall include:
 - (A) An owner or operator of a private sewer company or sewer facility; and
 - (B) A telecommunications carrier or telecommunications common carrier; and
- (2) Shall not include:
 - (A) An owner or operator of an aerial transportation enterprise;
 - (B) An owner or operator of a taxicab as defined in this section;
 - (C) Common carriers that transport only freight on the public highways, unless operating within localities, along routes, or between points that the public utilities commission finds to be inadequately serviced without regulation under this chapter;
 - (D) Persons engaged in the business of warehousing or storage unless the commission finds that regulation is necessary in the public interest;
 - (E) A carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between

- points within the State; provided that the towing, salvage, hauling, or carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally;
- (F) A carrier by water, substantially engaged in interstate or foreign commerce, that transports passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure;
- (G) [Any person who:
- (i) Controls, operates, or manages plants or facilities for the production, transmission, or furnishing of power primarily or entirely from nonfossil fuel sources; and
 - (ii) Provides, sells, or transmits all of that power, except as is used in its own internal operations, directly to a public utility for transmission to the public;] Any user, owner, or operator of the Hawaii electric system as defined under section 269-A;
- (H) A telecommunications provider only to the extent determined by the public utilities commission pursuant to section 269-16.9;
- (I) Any person who controls, operates, or manages plants or facilities developed pursuant to chapter 167 for conveying, distributing, and transmitting water for irrigation and other purposes for public use and purpose;
- (J) Any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:
- (i) The services of the facility are provided pursuant to a service contract between the person and a state or county agency and at least ten per cent of the wastewater processed is used directly by the state or county agency that entered into the service contract;
 - (ii) The primary function of the facility is the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility owned by a state or county agency;
 - (iii) The facility does not make sales of water to residential customers;
 - (iv) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this subparagraph, "recycled water" and "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose; and
 - (v) The facility is not engaged, either directly or indirectly, in the processing of food wastes;
- (K) Any person who owns, controls, operates, or manages any seawater air conditioning district cooling project; provided that at least fifty per cent of the energy required for the seawater air conditioning district cooling system is provided by a renewable energy resource, such as cold, deep seawater;

- (L) Any person who owns, controls, operates, or manages plants or facilities primarily used to charge or discharge a vehicle battery that provides power for vehicle propulsion; and
- (M) Any person who:
 - (i) Owns, controls, operates, or manages a renewable energy system that is located on a customer's property; and
 - (ii) Provides, sells, or transmits the power generated from that renewable energy system to an electric utility or to the customer on whose property the renewable energy system is located; provided that, for purposes of this ~~[clause,]~~ subparagraph, a customer's property shall include all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, and utility rights-of-way.

If the application of this chapter is ordered by the commission in any case provided in ~~[paragraphs]~~ paragraph (2)(C), ~~[(2)(D), (2)(H), and (2)(I),]~~ (D), (H), and (I), the business of any public utility that presents evidence of bona fide operation on the date of the commencement of the proceedings resulting in the order shall be presumed to be necessary to the public convenience and necessity, but any certificate issued under this proviso shall nevertheless be subject to terms and conditions as the public utilities commission may prescribe, as provided in sections 269-16.9 and 269-20."

SECTION 4. In codifying the new part and sections added to chapter 269, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved June 27, 2012.)

ACT 167

H.B. NO. 2150

A Bill for an Act Relating to Agricultural Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Agricultural districts shall include:

- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry and game and fish propagation;
- (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
- (4) Wind generated energy production for public, private, and commercial use;

- (5) Biofuel production, as described in section 205-4.5(a)(15), for public, private, and commercial use;
- (6) Solar energy facilities; provided that:
 - (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D or E; and
 - (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser;
- (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, agricultural-energy facilities as defined in section 205-4.5(a)(16), vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a)(12);
- (8) Wind machines and wind farms;
- (9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
- (10) Agricultural parks;
- (11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; and
- (12) Open area recreational facilities.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics."

SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;

- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);
- (11) Agricultural parks;
- (12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:
 - (A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;
 - (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or
 - (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;
- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and pro-

vided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;

- (14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;
- (15) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuels processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

“Appurtenances” means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuels processing facilities.

“Biofuel processing facility” means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

- (16) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

“Agricultural activity” means any activity described in paragraphs (1) to (3) of this subsection.

“Agricultural-energy enterprise” means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

“Agricultural-energy facility” means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

“Appurtenances” means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

- (17) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, “wireless communication antenna” means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio sig-

nals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection;

- (18) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, "agricultural education programs" means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2; or
- (19) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser; provided that this use shall not be permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 27, 2012.)

ACT 168

S.B. NO. 2746

A Bill for an Act Relating to Electric Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 290, Session Laws of Hawaii 1997, established incentives for the registration, licensing, parking, and operation of electric vehicles.

The purpose of this Act is to supersede Act 290, Session Laws of Hawaii 1997.

SECTION 2. (a) The department of transportation may adopt rules pursuant to chapter 91, Hawaii Revised Statutes, for the registration of, and issuance of special license plates for, electric vehicles.

(b) An electric vehicle on which an electric vehicle license plate is affixed shall be exempt from payment of parking fees, including those collected through parking meters, charged by any state or county authority in this State, except that this exemption shall not apply:

- (1) For more than two and one-half hours of metered parking, or the maximum amount of time the meter allows, whichever is longer; or
- (2) To parking fees assessed in increments longer than one twenty-four-hour day, including weekly, monthly, or annual parking permits.

(c) An electric vehicle on which an electric vehicle license plate is affixed shall be exempt from high occupancy vehicle lane restrictions.

(d) For the purposes of this Act:

"Electric vehicle" means:

- (1) A neighborhood electric vehicle; or

- (2) A vehicle, with four or more wheels, that draws propulsion energy from a battery with at least four kilowatt hours of energy storage capacity that can be recharged from an external source of electricity.

SECTION 3. Act 290, Session Laws of Hawaii 1997, is repealed.

SECTION 4. This Act shall take effect upon its approval and shall be repealed on June 30, 2020.

(Approved June 27, 2012.)

ACT 169

H.B. NO. 2873

A Bill for an Act Relating to the Pacific International Space Center for Exploration Systems.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the Pacific international space center for exploration systems, including its proposed aerospace technology research and development park project, is an economic driver for the island of Hawaii that promotes the establishment and growth of new sustainable and green industries along with associated jobs, workforce development, internships, and science, technology, engineering, and math education programs. The legislature also finds that the Pacific international space center for exploration systems aerospace technology research and development park project will attract investment that will help to leverage costs of expanding the island of Hawaii's broadband capacity.

The legislature further finds there is a continued need for the Pacific international space center for exploration systems to work closely with the University of Hawaii, but also recognizes the center's need for the flexibility to make swift and independent decisions and take actions in the rapidly evolving aerospace sector to keep Hawaii competitive and attractive to industry partners. Therefore, a transfer of positions from the University of Hawaii to the department of business, economic development, and tourism is needed. This is especially critical with the recent emergence of private commercial space access and a resurgence of global space initiatives. Supporting these initiatives will involve significant private sector investment in the development, testing, and evaluation of robotics, broadband, energy production, energy storage, recycling, and other innovative technologies that can have immediate application for the Hawaii economy and the general well-being of the State.

The purpose of this Act is to transfer the Pacific international space center for exploration systems from the University of Hawaii to the department of business, economic development, and tourism.

SECTION 2. Chapter 201, Hawaii Revised Statutes, is amended by adding to part V a new subpart to be appropriately designated and to read as follows:

**“ . Pacific International Space Center for
Exploration Systems**

§201- Pacific international space center for exploration systems. (a) There is established the Pacific international space center for exploration sys-

tems, to be administratively attached to the office of aerospace development in the department of business, economic development, and tourism.

(b) The space center may employ, subject to chapter 76, technical experts and officers, agents, and employees, permanent and temporary, as required. The space center may also employ officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76, when in the determination of the board, the services to be performed by those employed are unique and essential to the execution of the functions of the space center.

§201- Pacific international space center for exploration systems; board of directors; establishment; duties. (a) There is established the board of directors of the Pacific international space center for exploration systems, consisting of ten members, to include:

- (1) The executive director of the space center as an ex officio voting member;
- (2) The director of business, economic development, and tourism, or the director's designated representative;
- (3) The president of the University of Hawaii, or the president's designated representative;
- (4) Six members from government, industry, and academia, both national and international, with appropriate professional interests and backgrounds; and
- (5) An invited representative from the National Aeronautics and Space Administration as an ex officio non-voting member,

to be appointed by the governor, pursuant to section 26-34; provided that of the members appointed under paragraph (4), two members shall be appointed from a list of nominees submitted by the president of the senate, two members shall be appointed from a list of nominees submitted by the speaker of the house of representatives, and two members shall be appointed by the governor.

The board shall select a chairperson from among its members.

(b) Five members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the space center. The members of the board shall serve without compensation, but shall be entitled to reimbursement for necessary expenses, including travel expenses, incurred in the performance of their duties.

(c) The director of business, economic development, and tourism shall appoint an executive director to the space center, subject to confirmation by the board, who shall be exempt from chapter 76. The board shall set the salary and duties of the executive director.

§201- General powers. (a) The board may:

- (1) Sue and be sued;
- (2) Adopt a seal and alter the seal at pleasure;
- (3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and
- (4) Adopt bylaws and rules, which shall be exempt from chapter 91, for its organization and internal management, and to carry into effect its purposes, powers, and programs.

(b) In addition to other powers conferred upon it, the board may do all things necessary and convenient to carry out the powers expressly provided in this subpart.

§201- Powers and duties of the Pacific international space center for exploration systems executive director. In addition to any other powers and duties provided in this subpart, the executive director shall:

- (1) Oversee, supervise, and direct the planning, evaluation, and coordination of space-related activities, and identify and promote opportunities for expanding and diversifying aerospace-related industries in the State pertaining to the space center;
- (2) Establish partnerships with corporate, government, and University of Hawaii entities that can promote and enhance the State's aerospace industry; and where possible, help to generate additional revenue for the University of Hawaii and create classes and other educational opportunities for students;
- (3) Work with local universities and community colleges to facilitate internships for students with the space center and associated companies;
- (4) Continue to work with the University of Hawaii on course development, teaching, workforce development, and outreach;
- (5) Promote innovative educational and workforce development programs that will enhance public awareness of the space center and enable residents to pursue employment in Hawaii's aerospace industry;
- (6) Act as the public representative of the space center;
- (7) Monitor national and global trends in the aerospace industry and promote global awareness of the space center;
- (8) Pursue projects in the aerospace sector that can be leveraged for improvements to the State's broadband and alternative energy capabilities;
- (9) Serve as a clearinghouse for information on the space center and associated activities;
- (10) Target existing businesses that can provide products or services of importance to the space center and its projects to support the expansion of these businesses in Hawaii;
- (11) Increase contact and maintain liaison with the National Aeronautics and Space Administration, related aerospace organizations, and other federal agencies and facilities;
- (12) Maintain and expand liaisons with local business and citizen groups;
- (13) Work with private landowners in the vicinity to expand opportunities and physical space and appurtenances for the participants in the space center's aerospace technology research and development park;
- (14) Adopt, amend, and repeal rules pursuant to chapter 91 necessary to carry out this subpart;
- (15) Contract for services as may be necessary for the purposes of this subpart; and
- (16) Do all other things necessary or proper to carry out the purposes of this subpart."

SECTION 3. Chapter 201, part V, Hawaii Revised Statutes, is amended by designating sections 201-71 to 201-75 as subpart A and inserting a title before section 201-71 to read as follows:

“A. General Provisions”

SECTION 4. Section 201-71, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Board” means the board of directors of the Pacific international space center for exploration systems.

“Space center” means the Pacific international space center for exploration systems.”

SECTION 5. Notwithstanding any law to the contrary, all responsibilities of the University of Hawaii heretofore held with regard to the Pacific international space center for exploration systems are transferred to the office of aerospace development of the department of business, economic development, and tourism.

SECTION 6. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the University of Hawaii relating to the functions transferred to the office of aerospace development of the department of business, economic development, and tourism shall be transferred with the functions to which they relate.

SECTION 7. All rules, policies, procedures, guidelines, and other material adopted or developed by the agencies, divisions, or officers transferred to or placed for administrative purposes under this Act, shall remain in full force and effect until amended or repealed by the department of business, economic development, and tourism pursuant to chapter 91, Hawaii Revised Statutes.

SECTION 8. All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the agencies, division, or offices transferred to or placed for administrative purposes with the department of business, economic development, and tourism by this Act, shall remain in full force and effect.

SECTION 9. All rights, powers, functions, and duties of the University of Hawaii as they relate to the Pacific international space center for exploration systems are transferred to the department of business, economic development, and tourism.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or

ACT 170

employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 10. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the purpose of operating the Pacific international space center for exploration systems aerospace technology research and development park project.

SECTION 12. The sum appropriated under section 11 shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 13. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2012.

(Approved June 27, 2012.)

ACT 170

H.B. NO. 2319

A Bill for an Act Relating to Economic Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the State has a strong interest in diversifying its economy and promoting the development of innovative companies in the creative and high technology sectors and that programs to support innovative companies and attract investment capital to the State have been successful. For example, the recently completed follow-on funding program assisted Hawaii-based companies, such as Kuehnle AgroSystems, Inc. and Oceanit Laboratories, Inc., to successfully commercialize their innovations and attract global customers for their products. The Hawaii employees' retirement system has also successfully implemented a Hawaii-targeted investment program that mobilized \$25,000,000 of venture capital for Hawaii-based entrepreneurs.

The purpose of this Act is to build on the successful efforts to mobilize private sector venture capital for Hawaii-based small businesses, through the Hawaii venture capital investment programs of Hawaii's institutional investors and the Hawaii strategic development corporation, by establishing a venture accelerator funding program to provide business advisors, mentors, and resources to

enable Hawaii's technology entrepreneurs to successfully compete for investment capital.

SECTION 2. (a) Notwithstanding the requirements of chapter 42F, Hawaii Revised Statutes, there is established in the Hawaii strategic development corporation a venture accelerator funding program that:

- (1) Shall support organizations in Hawaii's leading economic sectors, including renewable energy, broadband, aerospace, film, digital media, and agriculture; and
- (2) Closely integrates entrepreneurial support and capital investment to develop technology in Hawaii.
- (b) The purposes of the venture accelerator funding program are to:
 - (1) Provide accelerated business development in the fields of information technology, aerospace, science, engineering, film production, and digital media by providing business advisors, mentors, and resources for technology development, transition, and commercialization, and to support the creation of Hawaii-based businesses that are able to successfully compete for venture capital investment;
 - (2) Provide seed capital to sustain high-growth new venture company infrastructure development to assist enterprises to succeed commercially;
 - (3) Promote high-quality, high-income job opportunities for Hawaii residents and the graduates of Hawaii's educational institutions; and
 - (4) Reverse the "brain drain" by allowing talented entrepreneurs, scientists, and engineers to remain in or return to Hawaii with living-wage jobs.

(c) The Hawaii strategic development corporation shall contract with up to five organizations and provide program oversight; provided that selected organizations have demonstrated satisfactory performance outcomes in previous federally- or privately-funded technology and research projects or demonstrate their ability to satisfactorily manage a venture accelerator program and provide timely reports to document the venture accelerator's ability to achieve such performance benchmarks as:

- (1) Assisting companies in raising follow-on capital to accelerate the venture activity to two- to three-times greater returns on investment;
- (2) The ability to attract top talent in order to create and expand scalable technology based enterprises;
- (3) The ability to compete in the worldwide marketplace;
- (4) The selection of teams likely to benefit from the venture accelerator;
- (5) The retention of top talent in Hawaii following graduation from the venture accelerator funding program; and
- (6) The development of a meaningful experiential education for entrepreneurs.
- (d) To receive funding, a Hawaii-based venture accelerator shall:
 - (1) Submit proposals to the Hawaii strategic development corporation for funding in accordance with the seed capital assistance program requirements under part II of chapter 211F, Hawaii Revised Statutes; provided that a substantial portion of the work under the award shall be performed in the State;
 - (2) Submit a budget based on parameters established by the corporation;

- (3) Execute agreements in accordance with the corporation's contracting requirements;
- (4) Participate in community outreach efforts to support student participation in the fields of information technology, science, engineering, film production, and digital media; and
- (5) Submit quarterly and annual reports of project progress.
- (e) The Hawaii strategic development corporation shall submit a report to the legislature no later than twenty days prior to the regular session of 2013, and annually thereafter, on the specific annual outcome achieved through the activities and expenditures of the venture accelerator funding program.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Hawaii strategic development corporation to establish a venture accelerator funding program to assist organizations that closely integrate entrepreneurial support and capital investment to effectively develop technology-based entrepreneurial commercialization outcomes in Hawaii; provided that up to \$250,000 shall be expended for project oversight of program awardees.

The sum appropriated shall be expended by the Hawaii strategic development corporation for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved June 27, 2012.)

ACT 171

S.B. NO. 490

A Bill for an Act Relating to the Hawaii Tourism Authority.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. On January 19, 2012, President Obama signed an executive order and announced new initiatives to significantly increase travel and tourism in the United States. According to the United States Department of Commerce, international travel resulted in \$134,000,000,000 in United States exports in 2010 and is the nation's largest service export industry, constituting seven per cent of total exports and twenty-four per cent of service exports. The federal Bureau of Economic Analysis estimates that every additional sixty-five international visitors to the United States can generate enough exports to support one additional travel and tourism-related job. According to the travel industry and Bureau of Economic Analysis, international travel is particularly important because overseas travelers spend on average \$4,000 on each visit.

The legislature finds that these initiatives to increase travel and tourism in the United States will be highly beneficial to Hawaii's tourism economy and advance efforts to help provide up to an estimated 154,000 jobs in Hawaii. With 2.4 million international visitors arriving in Hawaii each year, Honolulu is the fifth busiest United States point-of-entry. The executive order will ease access for international travelers – a boon for Hawaii with its proximity to the growing Asia market. China in particular is an emerging market for Hawaii's tourism industry, with unprecedented growth potential. Visitor arrivals from China to Hawaii are expected to reach 125,394 in 2012, up twenty-eight per cent over 2011, with each visitor expected to spend \$380 per day while in the State, higher than any other market. The initiatives to increase the number of Chinese visas processed and

ensure that visa applicants are interviewed within three weeks are significant milestones for Chinese tourism to the United States and Hawaii.

In addition, visa waiver status for Taiwan has tremendous potential for the State's tourism industry. Following the visa waiver program with Korea in 2008, arrivals from Korea increased thirty-five per cent, and similar growth is anticipated with Taiwanese visitors.

SECTION 2. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Revenues collected under this chapter, except for revenues collected under section 237D-2(b), shall be distributed as follows, with the excess revenues to be deposited into the general fund:

- (1) 17.3 per cent of the revenues collected under this chapter shall be deposited into the convention center enterprise special fund established under section 201B-8; provided that beginning January 1, 2002, if the amount of the revenue collected under this paragraph exceeds \$33,000,000 in any calendar year, revenues collected in excess of \$33,000,000 shall be deposited into the general fund;
- (2) 34.2 per cent of the revenues collected under this chapter shall be deposited into the tourism special fund established under section 201B-11 for tourism promotion and visitor industry research; provided that for any period beginning on July 1, ~~[2011,]~~ 2012, and ending on June 30, 2015, no more than ~~[\$69,000,000]~~ \$71,000,000 per fiscal year shall be deposited into the tourism special fund established under section 201B-11; provided further that beginning on July 1, 2012, and ending on June 30, 2015, \$2,000,000 shall be expended from the tourism special fund for development and implementation of initiatives to take advantage of expanded visa programs and increased travel opportunities for international visitors to Hawaii; and provided further that beginning on July 1, 2002, of the first \$1,000,000 in revenues deposited:
 - (A) Ninety per cent shall be deposited into the state parks special fund established in section 184-3.4; and
 - (B) Ten per cent shall be deposited into the special land and development fund established in section 171-19 for the Hawaii statewide trail and access program;

provided that of the 34.2 per cent, 0.5 per cent shall be transferred to a sub-account in the tourism special fund to provide funding for a safety and security budget, in accordance with the Hawaii tourism strategic plan 2005-2015; provided further that of the revenues remaining in the tourism special fund after revenues have been deposited as provided in this paragraph and except for any sum authorized by the legislature for expenditure from revenues subject to this paragraph, beginning July 1, 2007, funds shall be deposited into the tourism emergency trust fund, established in section 201B-10, in a manner sufficient to maintain a fund balance of \$5,000,000 in the tourism emergency trust fund; and
- (3) 44.8 per cent of the revenues collected under this chapter shall be transferred as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent; provided that for any period beginning on July 1, 2011, and ending on June 30, 2015, the total amount transferred to the counties shall not exceed \$93,000,000 per fiscal year.

Revenues collected under section 237D-2(b) shall be deposited into the general fund. All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved June 27, 2012.)

ACT 172

S.B. NO. 2281

A Bill for an Act Relating to Environmental Impact Statements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that state agencies that have experience with environmental review in Hawaii are able to determine which projects are likely to require full environmental review and should proceed directly to the preparation of an environmental impact statement. While this omits one layer of public participation through the environmental assessment, opportunities for public participation remain in the environmental impact statement process. The legislature further finds that bypassing the environmental assessment in certain situations will improve the efficiency of the environmental review process and speed the progress of completing those proposed actions.

The purpose of this Act is to allow agencies to determine, based on their judgment and experience, that an environmental impact statement is likely to be required for a proposed action, and, therefore, choose not to prepare an environmental assessment or to allow an applicant not to prepare an environmental assessment, and instead proceed directly to the preparation of an environmental impact statement.

SECTION 2. Section 343-5, Hawaii Revised Statutes, is amended to read as follows:

“§343-5 Applicability and requirements. (a) Except as otherwise provided, an environmental assessment shall be required for actions that:

- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an environmental assessment for proposed uses under section 205-2(d)(11) or 205-4.5(a)(13) shall only be required pursuant to section 205-5(b);
- (2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;
- (3) Propose any use within a shoreline area as defined in section 205A-41;

- (4) Propose any use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;
- (5) Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";
- (6) Propose any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;
- (7) Propose any reclassification of any land classified as a conservation district by the state land use commission under chapter 205;
- (8) Propose the construction of new or the expansion or modification of existing helicopter facilities within the State, that by way of their activities, may affect:
 - (A) Any land classified as a conservation district by the state land use commission under chapter 205;
 - (B) A shoreline area as defined in section 205A-41; or
 - (C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E; or until the state-wide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and
- (9) Propose any:
 - (A) Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
 - (B) Waste-to-energy facility;
 - (C) Landfill;
 - (D) Oil refinery; or
 - (E) Power-generating facility.

(b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or other than the use of state or county funds for the acquisition of unimproved real property that is not a specific type of action declared exempt under section 343-6, the agency shall prepare an environmental assessment for ~~[such]~~ the action at the earliest practicable time to determine whether an environmental impact statement shall be required[-

(+)]; provided that if the agency determines, through its judgment and experience, that an environmental impact statement is likely to be required, the agency may choose not to prepare an environmental assessment and instead shall prepare an environmental impact statement that begins with the preparation of an environmental impact statement preparation notice as provided by rules.

(c) For environmental assessments for which a finding of no significant impact is anticipated:

- ~~[(A)]~~ (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;

- ~~[(B)]~~ (2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3;
- ~~[(C)]~~ (3) The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required;
- ~~[(D)]~~ (4) A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment; and
- ~~[(E)]~~ (5) The agency shall file notice of ~~[such]~~ the determination with the office. When a conflict of interest may exist because the proposing agency and the agency making the determination are the same, the office may review the agency's determination, consult the agency, and advise the agency of potential conflicts, to comply with this section. The office shall publish the final determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement.

The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement.

- ~~[(2)]~~ (d) The final authority to accept a final statement shall rest with:
 - ~~[(A)]~~ (1) The governor, or the governor's authorized representative, whenever an action proposes the use of state lands or the use of state funds, or whenever a state agency proposes an action within the categories in subsection (a); or
 - ~~[(B)]~~ (2) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance pursuant to section 343-3.

~~[(e)]~~ (e) Whenever an applicant proposes an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall require the applicant to prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that~~[-for] if the agency determines, through its judgment and experience, that an environmental impact statement is likely to be required, the agency may authorize the applicant to choose not to prepare an environmental assessment and instead prepare an environmental impact statement that begins with the preparation of an environmental impact statement preparation notice as provided by rules.~~ For an action that proposes the establishment of a renewable energy facility, a draft environmental impact statement shall be prepared at

the earliest practicable time. The final approving agency for the request for approval is not required to be the accepting authority.

For environmental assessments for which a finding of no significant impact is anticipated:

- (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;
- (2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3; and
- (3) The applicant shall respond in writing to comments received during the review[,] and ~~[the agency]~~ the applicant shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of the agency's determination with the office, which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office.

The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3.

The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement.

The authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval. The final decision-making body or approving agency for the request for approval is not required to be the accepting authority. The planning department for the county in which the proposed action will occur shall be a permissible accepting authority for the final statement.

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of ~~[such]~~ the determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement pursuant to section 343-3.

The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination. In any affirmation or reversal of an appealed nonacceptance, the council shall

provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision.

~~[(d)]~~ (f) Whenever an applicant requests approval for a proposed action and there is a question as to which of two or more state or county agencies with jurisdiction has the responsibility of preparing the environmental assessment, the office, after consultation with and assistance from the affected state or county agencies, shall determine which agency shall prepare the assessment.

~~[(e)]~~ (g) In preparing an environmental assessment, an agency may consider and, where applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a statement is required and previously accepted statements. The council, by rule, shall establish criteria and procedures for the use of previous determinations and statements.

~~[(f)]~~ (h) Whenever an action is subject to both the National Environmental Policy Act of 1969 (Public Law 91-190) and the requirements of this chapter, the office and agencies shall cooperate with federal agencies to the fullest extent possible to reduce duplication between federal and state requirements. Such cooperation, to the fullest extent possible, shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has environmental impact statement requirements in addition to but not in conflict with this chapter, the office and agencies shall cooperate in fulfilling these requirements so that one document shall comply with all applicable laws.

~~[(g)]~~ (i) A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter, and no other statement for the proposed action shall be required."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 27, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 173

H.B. NO. 2265

A Bill for an Act Relating to the State Procurement Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§103D- Procurement statistics. The state procurement office shall keep statistics on solicitations and awards protested under section 103D-701 for the purpose of improving procurement procedures. The statistics shall include information on protests involving inadvertent errors."

SECTION 2. Section 103D-305, Hawaii Revised Statutes, is amended to read as follows:

"§103D-305 Small purchases; prohibition against parceling. (a) Procurements of less than \$100,000 for goods or services, or \$250,000 for construction shall be made in accordance with procedures set forth in rules adopted by the policy board that are designed to ensure administrative simplicity and as much competition as is practicable; provided that multiple expenditures shall not be created at the inception of a transaction or project so as to evade the requirements of this chapter; and provided further that procurement requirements shall not be artificially divided or parceled so as to constitute a small purchase under this section.

(b) Procurements [of] greater than \$50,000 for construction under subsection (a) shall require security by [a] performance ~~[bond]~~ and payment bonds, pursuant to section 103D-324, delivered to the ~~[purchasing agency]~~ procurement officer, that ~~[is:]~~ are:

- (1) In a form prescribed by the rules of the policy board;
- (2) Executed by a surety company authorized to do business in this State; and
- (3) In an amount equal to one hundred per cent of the price specified in the contract,

or shall otherwise be secured by a performance bond in a manner satisfactory to the ~~[purchasing agency]~~ procurement officer.

(c) Procurements of \$25,000 to less than ~~[\$100,000]~~ \$250,000 shall be made in accordance with small purchase procedures; provided that such small purchase procurements through an electronic system shall be required ~~[after the policy board has adopted rules for electronic procurement and provided training to the affected agency]."~~

SECTION 3. Section 103D-709, Hawaii Revised Statutes, is amended to read as follows:

"§103D-709 Administrative proceedings for review. (a) The several hearings officers appointed by the director of the department of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review and determine de novo, any request from any bidder, offeror, contractor, ~~or person aggrieved under section 103D-106, or governmental body aggrieved by a determination of the chief procurement officer, head of a purchasing agency, or a designee of either officer under section 103D-310, 103D-701, or 103D-702.~~

(b) Hearings to review and determine any request made pursuant to subsection (a) shall commence within twenty-one calendar days of receipt of the request. The hearings officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a written decision ~~[which], not later than forty-five days from the receipt of the request under subsection (a), that shall be final and conclusive unless a person or governmental body adversely affected by the decision commences an appeal in the circuit court of the circuit where the case or controversy arises under section 103D-710.~~

(c) Only parties to the protest made and decided pursuant to sections 103D-701, 103D-709(a), 103D-310(b), and ~~[[103D-702(g)]]~~ may initiate a proceeding under this section. The party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. All parties to the proceeding shall be afforded an opportunity to present oral or documentary evidence, conduct cross-examination as may be required, and present argument on all issues involved. ~~[The rules of evidence shall apply.]~~ Fact finding under section 91-10 shall apply.

(d) Any bidder, offeror, contractor, or person that is a party to a protest of a solicitation or award of a contract under section 103D-302 or 103D-303 that is decided pursuant to section 103D-701 may initiate a proceeding under this section; provided that:

- (1) For contracts with an estimated value of less than \$1,000,000, the protest concerns a matter that is greater than \$10,000; or
- (2) For contracts with an estimated value of \$1,000,000 or more, the protest concerns a matter that is equal to no less than ten per cent of the estimated value of the contract.

(e) The party initiating a proceeding falling within subsection (d) shall pay to the department of commerce and consumer affairs a cash or protest bond in the amount of:

- (1) \$1,000 for a contract with an estimated value of less than \$500,000;
- (2) \$2,000 for a contract with an estimated value of \$500,000 or more, but less than \$1,000,000; or
- (3) One-half per cent of the estimated value of the contract if the estimated value of the contract is \$1,000,000 or more; provided that in no event shall the required amount of the cash or protest bond be more than \$10,000.

If the initiating party prevails in the administrative proceeding, the cash or protest bond shall be returned to that party. If the initiating party does not prevail in the administrative proceeding, the cash or protest bond shall be deposited into the general fund.

[(d)] (f) The hearings officers shall ensure that a record of each proceeding which includes the following is compiled:

- (1) All pleadings, motions, intermediate rulings;
- (2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings of fact;
- (5) A recording of the proceeding which may be transcribed if judicial review of the written decision is sought under section 103D-710.

[(e)] (g) No action shall be taken on a solicitation or an award of a contract while a proceeding is pending, if the procurement was previously stayed under section 103D-701(f).

[(f)] (h) The hearings officer shall decide whether the determinations of the chief procurement officer or the chief procurement officer's designee were in accordance with the Constitution, statutes, rules, and the terms and conditions of the solicitation or contract[,] and shall order such relief as may be appropriate in accordance with this chapter.

[(g)] (i) The policy board shall adopt [such] other rules as may be necessary to ensure that the proceedings conducted pursuant to this section afford all parties an opportunity to be heard.

(j) As used in this section, "estimated value of the contract" or "estimated value," with respect to a contract, means the lowest responsible and responsive bid under section 103D-302, or the bid amount of the responsible offeror whose proposal is determined in writing to be the most advantageous under section 103D-303, as applicable."

SECTION 4. Section 103D-710, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) Within [twenty] ten calendar days of the filing of an application for judicial review, the hearings officer shall transmit the record of the administra-

tive proceedings to the circuit court of the circuit where the case or controversy arises.”

2. By amending subsection (e) to read:

“(e) [Upon] No later than thirty days from the filing of the application for judicial review, based upon review of the record, the circuit court may affirm the decision of the hearings officer issued pursuant to section 103D-709 or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if substantial rights may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the chief procurement officer or head of the purchasing agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion[.];

provided that if an application for judicial review is not resolved by the thirtieth day from the filing of the application, the court shall lose jurisdiction and the decision of the hearings officer shall not be disturbed. All time limitations on actions, as provided for in section 103D-712, shall remain in effect.”

SECTION 5. Act 175, Session Laws of Hawaii 2009, section 14, as amended by section 1 of Act 107, Session Laws of Hawaii 2010, is amended to read as follows:

“SECTION 14. This Act shall take effect on July 1, 2009; provided that[:

- (1) ~~Part I~~ section 1 shall be repealed on July 1, 2012, and [sections] section 103D-102 [and 103D-305], Hawaii Revised Statutes, shall be reenacted in the form in which [they] it read on the day before the effective date of this Act[; and
- (2) ~~Sections 7, 9, and 10 of this Act shall be repealed on July 1, 2011, and sections 103D-709, 103D-710(e), and 103D-710(e), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act].”~~

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on June 30, 2012.

(Approved June 27, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 174

H.B. NO. 2529

A Bill for an Act Relating to the Department of Hawaiian Home Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 213, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (d) to read as follows:

“(d) There are established in the treasury of the State four trust funds, to be known respectively as the Hawaiian home operating fund, the Hawaiian home receipts fund, the Hawaiian home trust fund, and the native Hawaiian rehabilitation fund, and one special fund to be known as the Hawaiian home administration account. Expenditures and procurements less than \$100,000 made from these trust funds and accounts shall be exempt from chapter 103D, Hawaii Revised Statutes; provided that the department shall develop internal policies and procedures for the procurement of goods, services, and construction that are consistent with the goals of public accountability and public procurement practices for expenditures from these funds. The department is encouraged to use the provisions of chapter 103D, Hawaii Revised Statutes, where possible; provided that the use of one or more provisions of chapter 103D, Hawaii Revised Statutes, shall not constitute a waiver of the exemption from that chapter and shall not subject the department to any other provision of chapter 103D, Hawaii Revised Statutes.

The department shall submit an annual report to the legislature no later than twenty days before the convening of each regular session. The report shall include, but not be limited to, solicitations of goods, services, and construction, types of procurements, and awardees.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012; provided that on June 30, 2015, this Act shall be repealed and section 213, Hawaiian Homes Commission Act, 1920, as amended, shall be reenacted in the form in which it read on June 30, 2012.

(Approved June 28, 2012.)

ACT 175

S.B. NO. 2790

A Bill for an Act Relating to the Department of Hawaiian Home Lands.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

Section 1. Act 187, Session Laws of Hawaii 2010, is amended by amending section 12 to read as follows:

“SECTION 12. This Act shall take effect on July 1, 2010; provided that on June 30, [2012,] 2015, part I of this Act shall be repealed and sections 37-40 and 103D-309(a), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.”

SECTION 2. The department of Hawaiian home lands shall report to the legislature no later than twenty days prior to the convening of the regular sessions of 2013, 2014, and 2015 on the status of the pilot project established under part I of Act 187, Session Laws of Hawaii 2010.

PART II

SECTION 3. Section 213, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (i) to read as follows:

“(i) Native Hawaiian rehabilitation fund. Pursuant to Article XII, Section 1, of the Hawaii Constitution, thirty per cent of the state receipts, derived from lands previously cultivated as sugarcane lands under any other provision of law and from water licenses, ~~[and fifteen per cent of all revenues from lease agreements granted lease extensions pursuant to section 228,]~~ shall be deposited into this fund. The department shall use this money for the rehabilitation of native Hawaiians, native Hawaiian families, and Hawaiian homestead communities, which shall include the educational, economic, political, social, and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved and perpetuated.

The native Hawaiian rehabilitation fund shall be subject to the following conditions:

- (1) All moneys received by the fund shall be deposited into the state treasury and kept separate and apart from all other moneys in the state treasury;
- (2) The director of finance shall serve as a custodian of the fund. All payments from the fund shall be made by the director of finance only upon vouchers approved by the commission;
- (3) The commission shall develop guidelines for the investment of moneys in the fund;
- (4) The commission may invest and reinvest in investments authorized by chapter 88, Hawaii Revised Statutes. The commission may hold, purchase, sell, assign, transfer, or dispose of any securities and investments in which any of the moneys shall have been invested, as well as the proceeds of such investments; and
- (5) The commission may pay out of any of the moneys held for investment, a reasonable amount to any person for supplying investment advisory or consultive services; and to meet such other costs incident to the prudent investment of moneys as the commission may approve.

Any payment of principal, interest, or other earnings arising out of the loan or investment of money from this fund shall be credited to and deposited into this fund.

Sections 214, 215, 216, and 217 shall not apply to administration of this fund. The department is authorized to adopt rules under chapter 91, Hawaii Revised Statutes, necessary to administer and carry out the purposes of this fund.

~~“The department shall submit an annual report to the legislature and the United States Department of the Interior, no later than twenty days prior to the convening of each regular session of the legislature, beginning with the regular session of 2011, on expenditures from this fund that are derived from the amounts deposited from commercial and multipurpose project lease extensions pursuant to section 228(e), including the amount expended, the recipient of the moneys expended, and the purpose of the expenditure.”~~

SECTION 4. Section 228, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“~~[[§228.]]~~ Commercial and multipurpose project leases; extension of term. (a) Notwithstanding any law to the contrary, the procedures under this section shall apply to commercial and multipurpose projects under section 204 or 220.5, and shall be in addition to any other procedures required by law.

(b) Prior to the disposition of available land through a request for proposals for an initial lease for a commercial or multipurpose project, the department shall consult with beneficiaries of the trust in the master planning of the

available lands. The process of beneficiary consultation shall be as established by the department and shall:

- (1) Engage beneficiaries and beneficiary-serving organizations;
- (2) Provide for the timely dissemination of information about the proposed project and the gathering of input; and
- (3) Allow for a reasonable time and reasonable access to relevant information for evaluation and consideration.

(c) Notwithstanding section 220.5(d)(1), the department may extend the term of a lease of Hawaiian home lands for commercial or multipurpose projects and with the approval by the department of a written agreement proposed by the lessee, or the lessee and developer, to:

- (1) Make improvements to the leased property; or
- (2) Obtain financing for the improvement of the leased lands.

The extension of the lease pursuant to this section shall be based upon the improvements made or to be made, shall be no longer than twenty years, and shall be granted only once.

(d) Before the written agreement is approved, the lessee, or the lessee and developer, shall submit to the department the plans and specifications for the proposed development. The department shall review the plans, specifications, and the written agreement and determine:

- (1) Whether the development is of sufficient value and meets the priorities of the commission to justify an extension of the lease;
- (2) The estimated time needed to complete the improvements and expected date of completion of the improvements; and
- (3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the department, and percentage rent where gross receipts exceed a specified amount.

The commission shall adopt and publish a policy pursuant to chapter 91, Hawaii Revised Statutes, which shall be used to evaluate any request for a lease extension, including the terms of the lease, prospective payments, and renegotiation, and shall be used by the commission for any final determination on a lease extension request.

~~[(e) Upon the extension of a lease term pursuant to subsection (c), the department shall deposit fifteen per cent of all revenues generated from the lease from the time the lease extension is granted, into the native Hawaiian rehabilitation fund under section 213(i).~~

(f) (e) The department shall submit an annual report to the legislature and the United States Department of the Interior, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2011, of all leases of available lands for commercial and multipurpose projects, including the following:

- (1) The total number of leases;
- (2) Acreage of each lease;
- (3) Terms of each lease;
- (4) Whether the lessee is a beneficiary or beneficiary controlled organization; and
- (5) Whether the lease was for retained available lands not required for leasing under section 207(a), and was negotiated with a native Hawaiian, or organization or association owned or controlled by native Hawaiians, under section 204(a)(2).

(f) All lease revenues from commercial and multipurpose project leases collected by the department to which this section applies shall be deposited into the Hawaiian home administration account established under section 213(f).

(g) As used in this section, “improvements” means any renovation, rehabilitation, reconstruction, or construction of the property, including minimum requirements for off-site and on-site improvements.”

SECTION 5. Act 187, Session Laws of Hawaii 2010, is amended by repealing section 9:

~~["SECTION 9. All lease revenues from commercial and multipurpose project leases collected by the department of Hawaiian home lands to which section , Hawaiian Homes Commission Act, 1920, as amended, applies shall be deposited into the Hawaiian home lands trust fund established under section 213.6, Hawaiian Homes Commission Act, 1920, as amended; provided that the department of Hawaiian home lands shall deposit fifteen per cent of those revenues that are derived from the amounts deposited from commercial and multipurpose project lease extensions pursuant to section (e), Hawaiian Homes Commission Act, 1920, as amended, into the native Hawaiian rehabilitation fund established under section 213(i), Hawaiian Homes Commission Act, 1920, as amended."]~~

PART III

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2012; provided that part I shall take effect on June 29, 2012.

(Approved June 28, 2012.)

ACT 176

S.B. NO. 2858

A Bill for an Act Relating to Open Government.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 92F, Hawaii Revised Statutes, is amended by adding to part IV a new section to be appropriately designated and to read as follows:

“§92F- Agency appeal of a decision by the office of information practices. (a) An agency may not appeal a decision by the office of information practices made under this chapter or part I of chapter 92, except as provided in this section. Within thirty days of the date of the decision, an agency may seek judicial review of a final decision rendered by the office of information practices under this chapter or part I of chapter 92, by filing a complaint to initiate a special proceeding in the circuit court of the judicial circuit in the State where:

- (1) The request for access to a record was made;
- (2) The act the office determined was prohibited under part I of chapter 92 occurred; or
- (3) The agency’s principal place of business is located.

(b) The agency shall give notice of the complaint to the office of information practices and the person who requested the decision for which the agency seeks judicial review by serving a copy of the complaint on each; provided that the office of information practices and the person who requested the decision shall not be required to participate in the proceeding; and provided further that

the court shall proceed to review the decision pursuant to the rules applicable to a special proceeding, upon the expiration of time that an answer to the complaint would otherwise need to be filed under the rules of court by the office of information practices or the person upon whom the complaint was served. The office of information practices or the person who requested the decision may intervene in the proceeding.

(c) Within thirty days of service of the complaint, the office of information practices shall file a certified copy of the record that it compiled to make its decision in the circuit court and mail a copy of the index to that record to the appealing agency. The circuit court's review shall be limited to the record that was before the office of information practices when it rendered the decision, unless the circuit court finds that extraordinary circumstances justify discovery and admission of additional evidence. The circuit court shall uphold a decision of the office of information practices, unless the circuit court concludes that the decision was palpably erroneous."

SECTION 2. Section 92-1.5, Hawaii Revised Statutes, is amended to read as follows:

"[H§92-1.5]] Administration of this part. The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. An agency may not appeal a decision by the office of information practices made under this chapter, except as provided in section 92F- . The director of the office of information practices shall submit an annual report of these complaints along with final resolution of complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session."

SECTION 3. Section 92-12, Hawaii Revised Statutes, is amended to read as follows:

"§92-12 Enforcement. (a) The attorney general and the prosecuting attorney shall enforce this part.

(b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.

(c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable ~~[attorney]~~ attorney's fees and costs to the prevailing party in a suit brought under this section.

(d) Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous.

~~[(d)]~~ (e) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:

- (1) There is likelihood that the party bringing the action will prevail on the merits;
- (2) Irreparable damage will result if a stay is not ordered;
- (3) No irreparable damage to the public will result from the stay order; and
- (4) Public interest will be served by the stay order."

SECTION 4. Section 92F-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In an action to compel disclosure, the circuit court shall hear the matter de novo[-]; provided that if the action to compel disclosure is brought because an agency has not made a record available as required by section 92F-15.5(b) after the office of information practices has made a decision to disclose the record and the agency has not appealed that decision within the time period provided by 92F-, the decision of the office of information practices shall not be subject to challenge by the agency in the action to compel disclosure. Opinions and rulings of the office of information practices shall be admissible[-] and shall be considered as precedent unless found to be palpably erroneous, except that in an action to compel disclosure brought by an aggrieved person after the office of information practices upheld the agency’s denial of access to the person as provided in section 92F-15.5(b), the opinion or ruling upholding the agency’s denial of access shall be reviewed de novo. The circuit court may examine the government record at issue, in camera, to assist in determining whether it, or any part of it, may be withheld.”

SECTION 5. Section 92F-27, Hawaii Revised Statutes, is amended to read as follows:

“§92F-27 Civil actions and remedies. (a) An individual may bring a civil action against an agency in a circuit court of the State whenever an agency fails to comply with any provision of this part, and after appropriate administrative remedies under sections 92F-23, 92F-24, and 92F-25 have been exhausted.

(b) Opinions and rulings of the office of information practices shall be admissible and shall be considered as precedent unless found to be palpably erroneous, except that the opinion or ruling upholding the agency’s denial of access to the aggrieved person shall be reviewed de novo. The circuit court may examine the record at issue, in camera, to assist in determining whether it, or any part of it, may be withheld.

[(b)] (c) In any action brought under this section the court may order the agency to correct or amend the complainant’s personal record, to require any other agency action, or to enjoin such agency from improper actions as the court may deem necessary and appropriate to render substantial relief.

[(e)] (d) In any action brought under this section in which the court determines that the agency knowingly or intentionally violated a provision of this part, the agency shall be liable to the complainant in an amount equal to the sum of:

- (1) Actual damages sustained by the complainant as a result of the failure of the agency to properly maintain the personal record, but in no case shall [~~a complainant (individual)~~] an individual complainant entitled to recovery receive less than the sum of \$1,000; and
- (2) The costs of the action together with reasonable attorney’s fees as determined by the court.

[(d)] (e) The court may assess reasonable attorney’s fees and other litigation costs reasonably incurred against the agency in any case in which the complainant has substantially prevailed, and against the complainant where the charges brought against the agency were frivolous.

[(e)] (f) An action may be brought in the circuit court where the complainant resides, the complainant’s principal place of business is situated, or the complainant’s relevant personal record is situated. No action shall be brought later than two years after notification of the agency denial, or where applica-

ble, the date of receipt of the final determination of the office of information practices.”

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on January 1, 2013.

(Approved June 28, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 177

S.B. NO. 2859

A Bill for an Act Relating to Open Government.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 92-2.5, Hawaii Revised Statutes, is amended to read as follows:

“§92-2.5 Permitted interactions of members. (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

- (1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member’s authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

- (2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member’s authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

(c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board’s officers may be conducted in private without limitation or subsequent reporting.

(d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:

- (1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;
- (2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and
- (3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:
 - (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and
 - (B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

(e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

[(d)] (f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

[(e)] (g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

[(f)] (h) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part."

SECTION 2. Section 92-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board shall give written public notice of any regular, special, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting, and in the case of an executive meeting the purpose shall be stated. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved June 28, 2012.)

ACT 178

S.B. NO. 2545

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the period from birth to age five is the most crucial period of learning in a child's life. This is when over eighty-five per cent of a person's brain development takes place. Early life experiences lay the groundwork for a child's lifelong learning and behavior. The legislature further finds that high quality early learning programs that are affordable and accessible for all children are critically important for ensuring the success of Hawaii's keiki.

In addition, the significant, long-term benefits realized through investments in high-quality, early learning systems have been established through decades of research. Many studies show the importance of early childhood education. For example, a federal Department of Education study reports that children enrolled in kindergarten increase their knowledge and skills regardless of development prior to enrollment. Kindergarteners are expected to leave kindergarten knowing how to read and write. First graders who did not go to kindergarten are typically developmentally behind their peers in academic and social development and are more likely to fail a grade level in elementary school.

The purpose of this Act is, among other things, to:

- (1) Establish the executive office on early learning;
- (2) Establish the early learning advisory board to replace the early learning council;
- (3) Repeal junior kindergarten programs at the end of the 2013-2014 school year;
- (4) Starting with the 2014-2015 school year, require students to be at least five years of age on July 31 of the school year in order to attend kindergarten;
- (5) Make an appropriation to the executive office on early learning; and
- (6) Require an implementation plan and projected financials in order to ensure a seamless transition from the junior kindergarten program to the keiki first steps program in the 2014-2015 school year.

SECTION 2. Chapter 302L, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§302L-A Executive office on early learning; director; general functions, duties, and powers. (a) There is established an executive office on early learning that shall be temporarily placed within the office of the governor; provided that on July 1, 2015, the executive office on early learning shall be permanently established within the department of education for administrative purposes only.

(b) The head of the executive office on early learning shall be known as the director of the executive office on early learning, hereinafter referred to as director. The director shall:

- (1) Be appointed by the governor;
- (2) Have professional training in the field of social work, education, or other related fields;
- (3) Have direct experience in programs or services related to early education;
- (4) Have recent experience in a supervisory, consultative, or administrative position;
- (5) Be paid a salary set by the governor that shall not exceed ninety per cent of the salary of the director of human resources development; and
- (6) Be included in any benefit program generally applicable to the officers and employees of the State.

(c) The director shall be responsible for:

- (1) Serving as the principal officer in state government responsible for the performance, development, and control of programs, policies, and activities related to a public-private comprehensive early childhood system for children, from prenatal care to entrance into kindergarten;
- (2) Overseeing, supervising, and directing the performance of the director's subordinates in various activities, including planning, evaluation, and coordination of early learning programs;
- (3) Administering funds allocated for the office and applying for, receiving, and disbursing grants and donations from all sources for early learning programs and services;
- (4) Assessing the policies and practices of other agencies impacting early learning and conducting advocacy efforts for early learning;
- (5) Advising agencies on new legislation, programs, and policy initiatives relating to early learning;
- (6) Employing and retaining staff as may be necessary for the purposes of this section; and
- (7) Contracting for services that may be necessary for the purposes of this section, including through master contracts with other state agencies receiving federal and state funds for programs and services for early learning, and purchase of service agreements with appropriate agencies.

(d) In developing the early learning system established pursuant to section 302L-2, the office, among other things, shall:

- (1) Establish policies and procedures governing its operations;
- (2) Develop a plan, with goals and objectives, for the early learning system, including the development, execution, and monitoring of a phased implementation plan;
- (3) Coordinate, improve, and expand upon existing early learning programs and services for children from prenatal care until the time they enter kindergarten;
- (4) Establish policies and procedures to include existing early learning programs and services;
- (5) Establish additional early learning programs and services, including public and private partnerships, where applicable;
- (6) Establish policies and procedures governing the inclusion of children with special needs;

- (7) Develop incentives to enhance the quality of programs, services, and educational professionals within the early learning system;
 - (8) Coordinate efforts to develop a highly-qualified, stable, and diverse workforce;
 - (9) Develop and implement methods of maximizing the engagement of families, caregivers, and teachers in the early learning system;
 - (10) Develop an effective, comprehensive, and integrated system to provide training and technical support for programs and services within the early learning system;
 - (11) Develop standards of accountability to ensure that high-quality early learning experiences are provided by programs and services of the early learning system;
 - (12) Collect, interpret, and release data relating to early learning in the State;
 - (13) Recommend the appropriate proportion of state funds that should be distributed to programs and services across the early learning system, to ensure the most effective and efficient allocation of fiscal resources within the early learning system;
 - (14) Promote awareness of early learning opportunities to families and the general public; and
 - (15) Consult with community groups, including statewide organizations that are involved in early learning professional development, policy and advocacy, and early childhood programs.
- (e) The Hawaii head start state collaboration office shall be transferred from the department of human services to the executive office on early learning.

§302L-B Early learning advisory board. (a) There is established an early learning advisory board, whose members shall be appointed by the governor pursuant to section 26-34. The advisory board shall be responsible for:

- (1) Advising the office on how best to meet the educational needs of children, from prenatal care to entry into kindergarten;
 - (2) Providing recommendations to the office on improving the quality, availability, and coordination of early childhood care and education programs;
 - (3) Promoting collaboration across agencies and stakeholders serving young children; and
 - (4) Being an independent voice for children's health, safety, development, and learning.
- (b) The advisory board shall consist of the following voting members:
- (1) A representative of center-based program providers or the representative's designee;
 - (2) A representative of family child care program providers;
 - (3) A representative of family-child interaction learning program providers;
 - (4) A representative of philanthropic organizations that support early learning or the representative's designee;
 - (5) A representative from a head start provider agency;
 - (6) A representative from the Hawaii Early Intervention Coordinating Council;
 - (7) A parent representative;
 - (8) A representative from the Hawaii chapter of the American Academy of Pediatrics;
 - (9) A representative of home-visiting program providers;

- (10) A representative of Hawaiian medium early learning providers; and
- (11) Two representatives of the Hawaii Council of Mayors or each representative's respective designee.

The superintendent of education, director of human services, director of health, and president of the University of Hawaii shall serve as ex officio, voting members of the advisory board.

The advisory board shall invite the director of the Hawaii head start state collaboration office, the chief executive officer of Kamehameha Schools, and the executive director of the Hawaii Association of Independent Schools, or their designees, to serve as voting members of the advisory board.

(c) Except for the superintendent of education, directors of state departments, president of the University of Hawaii, director of the Hawaii head start state collaboration office, chief executive officer of Kamehameha Schools, and the executive director of the Hawaii Association of Independent Schools, or their designees, the members of the advisory board shall serve staggered terms as follows:

- (1) The representative of center-based program providers shall serve a two-year term;
- (2) The representative of family child care program providers shall serve a three-year term;
- (3) The representative of family-child interaction learning program providers shall serve a three-year term;
- (4) The representative of philanthropic organizations that support early learning shall serve a two-year term;
- (5) The representative from a head start provider agency shall serve a three-year term;
- (6) The representative from the Hawaii Early Intervention Coordinating Council shall serve a three-year term;
- (7) The parent representative shall serve a two-year term;
- (8) The representative from the Hawaii chapter of the American Academy of Pediatrics shall serve a two-year term;
- (9) The representative of home-visiting program providers shall serve a three-year term;
- (10) The representative of Hawaiian medium early learning providers shall serve a two-year term; and
- (11) Of the two representatives of the Hawaii Council of Mayors, one shall serve a two-year term, and the other shall serve a three-year term as determined by the Hawaii Council of Mayors.

(d) The advisory board shall select a chairperson by a majority vote of its members; provided that the chairperson shall be a representative from the private sector. A majority of the members serving on the advisory board shall constitute a quorum to conduct business. The concurrence of the majority of the members serving on the advisory board shall be necessary to make any action of the advisory board valid.

(e) The advisory board may form workgroups and subcommittees, including with individuals who are not advisory board members, to:

- (1) Obtain resource information from early learning professionals and other individuals as deemed necessary by the advisory board;
- (2) Make recommendations to the advisory board; and
- (3) Perform other functions as deemed necessary by the advisory board to fulfill its duties and responsibilities.

Two or more advisory board members, but less than a quorum, may discuss matters relating to official advisory board business in the course of their

participation in a workgroup or subcommittee, and such discussion shall be a permitted interaction as provided for in section 92-2.5.

(f) The advisory board may testify before the legislature on any matter related to its duties and responsibilities.

(g) Members of the advisory board shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

§302L-C Early childhood education facilities; pre-plus. (a) There is established the pre-plus program within the office to expand access to affordable and high-quality early childhood education for children from low-income families who are not otherwise eligible for kindergarten, by allowing preschool programs to be established on public school campuses through public-private partnerships.

(b) The office, the department of education, and the department of human services shall work collaboratively to develop suitable pre-plus classrooms on department of education campuses statewide, including conversion charter school campuses. The executive office on early learning, with the department of education and department of human services, shall coordinate site selection for additional pre-plus programs at public school sites, with priority given to public school sites that serve at-risk children as defined in section 302L-1, including sites located in areas with limited access to early learning programs and services."

SECTION 3. Section 302A-411, Hawaii Revised Statutes, is amended to read as follows:

"§302A-411 [~~Junior kindergarten and kindergarten~~] Kindergarten program; establishment; attendance. (a) The department shall establish and maintain [~~junior kindergartens and~~] kindergartens with a program of instruction as a part of the public school system; provided that:

- (1) Attendance shall not be mandatory; and
- (2) Charter schools shall be excluded from mandatory participation in the program.

(b) [~~The department shall establish a two-tier junior kindergarten and kindergarten program to support the range of developmental abilities of children in junior kindergarten and kindergarten. Schools shall not move students between junior kindergarten and kindergarten, except in cases where the movement is warranted and based on appropriate assessments determined by:~~

- (1) A qualified teacher with early childhood education background or experience; and
- (2) The formative and summative assessment of a student's academic, physical, social, and emotional abilities;

provided that, beginning with the 2010-2011 school year, the department shall use successful assessment tools and protocols for determining a student's initial placement and for decision making about a student's movement between tiers and into grade one. Junior kindergarten students may graduate directly to grade one when promotion is based on appropriate assessments and other progress data collected over time.

(c) Beginning with the 2004-2005 school year, a child who will be at least five years of age on or before December 31 of the school year may attend a public school kindergarten. Beginning with the 2006-2007 school year, a child who will be at least five years of age on or before August 1 of the school year may attend a public school kindergarten. Beginning with the 2006-2007 school year, a

child who will be at least five years of age after August 1 and before January 1 of the school year may attend a public school junior kindergarten.] Beginning with the [2013-2014] 2014-2015 school year, a child who will be at least five years of age on [the first day of instruction] July 31 of the school year may attend a public school kindergarten.

~~[(d)]~~ (c) The department may accept gifts to establish and maintain [junior kindergartens and] kindergartens.”

SECTION 4. Section 302A-1151.5, Hawaii Revised Statutes, is amended to read as follows:

“[§302A-1151.5]] Use of vacant public school facilities for pre-plus programs and by charter schools. (a) When the department considers whether to close any particular public school, it shall simultaneously give reasonable consideration to making all or portions of the facilities of the public school available for [the]:

- (1) The exclusive occupancy and use by a charter school or a pre-plus program established pursuant to section 302L-C; or
- (2) The joint occupancy and use by the charter school or a pre-plus program and the department;

provided that the department may elect to use the facilities for the support of public education programs, with preference given to instructional uses over administrative uses.

(b) The department shall submit a notice of possible availability of a public school to the charter school review panel and the executive office on early learning as early as possible; provided that if a vacancy is established, a notice of vacancy shall be submitted to the charter school review panel and executive office on early learning no later than thirty days after the establishment of the vacancy.

(c) Pursuant to section 302B-3.6 and upon receipt of a notice pursuant to subsection (b), the charter school review panel shall solicit applications from charter schools interested in using and occupying all or portions of the facilities of the public school and submit a prioritized list of charter schools to the department for final determination of which charter school, if any, shall be authorized to use and occupy the public school facilities.

(d) Upon receipt of a notice pursuant to subsection (b), the executive office on early learning shall solicit applications from pre-plus programs interested in using and occupying all or portions of the facilities of the public school and submit a prioritized list of pre-plus programs to the department for final determination of which pre-plus program, if any, shall be authorized to use and occupy the public school facilities.

~~[(d)]~~ (e) Upon the selection of a charter school or pre-plus program to use a vacant school facility or portion of a school facility, the department and the charter school review panel or executive office on early learning, whichever is appropriate, shall enter into necessary agreements within ninety days of the selection to carry out the purposes of this section.

~~[(e)]~~ (f) After receipt [by the charter school review panel] of a notice pursuant to subsection (b), if the charter school review panel ~~[does]~~ or executive office on early learning does not provide a prioritized list of charter schools or pre-plus programs because no charter school or pre-plus program has requested to use the facilities of the public school, or if the department receives the prioritized [list] lists but determines that no charter school or pre-plus program on [the] either list is an appropriate candidate to occupy and use the facilities, the department shall give reasonable consideration to making all or portions of the

facilities of the public school, if closed, available for occupancy and use for other educational purposes.

[(f)] (g) The department shall adopt rules necessary to carry out the purposes of this section.

[(g)] (h) For purposes of this section, "public school" means any school that falls within the definition of public schools in section 302A-101, except for charter schools."

SECTION 5. Section 302L-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to read:

"Advisory board" means the early learning advisory board established pursuant to this chapter.

"Office" means the executive office on early learning established pursuant to this chapter."

2. By repealing the definition of "council":

["Council" means the early learning council established pursuant to this chapter."]

SECTION 6. Section 302L-3, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 346-1.7, Hawaii Revised Statutes, is repealed.

SECTION 8. The executive office on early learning established pursuant to section 2 of this Act shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2013 on the status of an implementation plan for the development of the early learning system established pursuant to section 302L-2, Hawaii Revised Statutes. The report shall include a timeline of the implementation plan and any projected funding needs, with a focus on targeting four year old children.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2012-2013 to establish the executive office on early learning.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 10. The members serving on the early learning council on the effective date of this Act shall serve as the initial members of the early learning advisory board established pursuant to section 2 and shall continue to serve as members of the early learning advisory board until their terms expire.

SECTION 11. Sections 302A-1506.5, 302L-2, 302L-4, and 302L-5, Hawaii Revised Statutes, are amended by substituting the term "executive office on early learning" wherever the term "early learning council" appears and by substituting the term "office" whenever the term "council" appears, as the context requires.

SECTION 12. Section 302L-3.5, Hawaii Revised Statutes, is amended by substituting the term "advisory board" wherever the term "council" appears, as the context requires.

SECTION 13. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 15. This Act shall take effect on July 1, 2012; provided that section 3 of this Act shall take effect on July 1, 2014.

(Approved June 28, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 179

H.B. NO. 2605

A Bill for an Act Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to conform Hawaii income tax law to the Internal Revenue Code.

SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For all taxable years beginning after December 31, [2010,] 2011, as used in this chapter, except as provided in section 235-2.35, “Internal Revenue Code” means subtitle A, chapter 1, of the federal Internal Revenue Code of 1986, as amended as of December 31, [2010,] 2011, as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income, except those provisions of the Internal Revenue Code and federal public laws which, pursuant to this chapter, do not apply or are otherwise limited in application and except for the provisions of Public Law 109-001 which apply to section 170 of the Internal Revenue Code. The provisions of Public Law 109-001 to accelerate the deduction for charitable cash contributions for the relief of victims of the 2004 Indian Ocean tsunami are applicable for the calendar year that ended December 31, 2004, and the calendar year ending December 31, 2005.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine:

- (1) The basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978; and
- (2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.”

SECTION 3. Section 235-2.35, Hawaii Revised Statutes, is amended to read as follows:

“§235-2.35 Operation of certain Internal Revenue Code provisions not operative under section 235-2.3. The following sections of the federal Internal Revenue Code of 1986, as amended, shall be operative for purposes of this chapter:

- ~~[(1) Section 6041 as applicable to persons under section 6041(h) (with respect to information returns at the source for certain corporations);]~~
- [(2)] (1) Section 6038D (with respect to information with respect to foreign financial assets). With respect to persons required to report information under this section, section 6662(j) (with respect to imposition of accuracy-related penalties on underpayments) and section 6501(e)(1)(A)(ii) (with respect to limitations on assessment and collection) shall also be operative for purposes of this chapter and shall be applied consistently with the correlating provisions of sections 231-36.6 and 235-111;
- [(3)] (2) Section 6045B (with respect to returns relating to actions affecting basis in securities); and
- [(4)] (3) Section 6050W (with respect to returns relating to payments made in settlement of payment card and third party network transactions).”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that sections 2 and 3 of this Act shall apply to the taxable years beginning after December 31, 2011.

(Approved June 28, 2012.)

ACT 180

S.B. NO. 2868

A Bill for an Act Relating to Tax Clearance Fees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Taxpayers are required to obtain tax clearances from the department of taxation for various purposes, including obtaining a government contract or receiving final payment on a government contract. Currently, taxpayers may obtain tax clearances without paying a fee for the tax clearance. The department of taxation processes approximately twenty thousand to thirty thousand tax clearance applications per year. In addition, certified copies of the tax clearance can also be obtained from the department of taxation without paying a fee. Approximately thirty thousand certified copies of tax clearances are provided each year.

The purpose of this Act is to allow the department of taxation to impose a \$20 fee for a tax clearance application and a \$5 fee to obtain a certified copy of a tax clearance.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§231- Tax clearance fees. The department may charge a fee of \$20 for each tax clearance application submitted and \$5 for each certified copy of a tax clearance.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval and shall apply to requests for tax clearances and requests for certified copies of tax clearances received on or after July 1, 2012.

(Approved June 28, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 181

H.B. NO. 2326

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 232E-3, Hawaii Revised Statutes, is amended to read as follows:

“§232E-3 Duties. The commission shall conduct a systematic review of the State’s tax structure, using such standards as equity and efficiency. Thirty days prior to the convening of the second regular session of the legislature after the members of the commission have been appointed, the commission shall submit to the legislature an evaluation of the State’s tax structure and recommend revenue and tax policy, except that [for]:

- (1) ~~For the commission appointed on or before July 1, 1980, or the replacement commission intended to function prior to the appointment of a new commission on or before July 1, 1985, the commission shall submit the required evaluation and recommendations to the legislature thirty days prior to the convening of the regular session of 1985[-]; and~~
- (2) For the commission appointed on or before July 1, 2010, or the successor commission intended to function prior to the appointment of a new commission on or before July 1, 2015, the commission shall submit the required evaluation and recommendations to the legislature thirty days prior to the convening of the regular session of 2013.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on May 2, 2012.

(Approved June 28, 2012.)

A Bill for an Act Relating to Foreclosures.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that Act 162, Session Laws of Hawaii 2010, established a mortgage foreclosure task force to recommend policies and procedures to improve the way mortgage foreclosures are conducted in the State. Act 162 required the task force to submit its findings and recommendations, including any proposed legislation, to the legislature for the regular sessions of 2011 and 2012.

The task force held several public meetings over the legislative interim of 2010 to discuss the various items for review raised under Act 162. Based upon these discussions, the task force adopted recommendations, including proposed legislation, in its report to the legislature for the regular session of 2011. Some of the task force's recommendations were included in Act 48, Session Laws of Hawaii 2011, a far-reaching mortgage foreclosure reform measure that, among other things:

- (1) Temporarily authorized mortgagors who are occupying, as a primary residence, real property that is subject to nonjudicial foreclosure to either:
 - (A) Participate in the mortgage foreclosure dispute resolution program established under Act 48; or
 - (B) Convert the nonjudicial foreclosure to a judicial foreclosure;
- (2) Imposed a temporary moratorium on all new nonjudicial foreclosures conducted under part I of chapter 667, Hawaii Revised Statutes; and
- (3) Specified prohibited conduct and consequences of violations for foreclosing mortgagees, including making any violation of the mortgage foreclosure law under chapter 667, Hawaii Revised Statutes, an unfair or deceptive act or practice subject to the enhanced penalties under chapter 480, Hawaii Revised Statutes.

The task force met again over several public meetings during the legislative interim of 2011 to continue its work under Act 162. The focus of these meetings was divided among these major issues:

- (1) The new mortgage foreclosure provisions of Act 48, Session Laws of Hawaii 2011;
- (2) Matters involving condominium and other homeowner associations, including association liens and the collection of unpaid assessments; and
- (3) Mortgage foreclosure counseling and dispute resolution issues.

Based upon its deliberations on these issues, the task force adopted further recommendations in its report to the legislature for the regular session of 2012.

The purpose of this Act is to implement the recommendations of the mortgage foreclosure task force submitted to the legislature for the regular session of 2012, and other best practices to address mortgage foreclosures and related issues.

PART II

SECTION 2. Chapter 421J, Hawaii Revised Statutes, is amended as follows:

1. By adding two new sections to be appropriately designated and to read:

“§421J-A Association fiscal matters; lien for assessments. (a) All sums assessed by the association, but unpaid for the share of the assessments chargeable to any unit, shall constitute a lien on the unit. The priority of the association’s lien shall, except as otherwise provided by law, be as provided in the association documents or, if no priority is provided in the association documents, by the recordation date of the liens; provided that any amendment to the association documents that governs the priority of liens on the unit shall not provide that an association lien shall have priority over a mortgage lien that is recorded before the amendment is recorded. A lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided that the expiration of a recorded lien shall in no way affect the association’s automatic lien that arises pursuant to this subsection or the association documents. Any proceedings to enforce an association’s lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of a unit subject to a lien of the association files a petition for relief under the United States Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for instituting proceedings to enforce the association’s lien shall be tolled until thirty days after the automatic stay of proceedings under section 362 of the United States Bankruptcy Code (11 U.S.C. §362) is lifted.

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association and in the name of the association; provided that no association may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part IA of chapter 667. In any association foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the association documents or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed by the unit owner or any tenant of the unit. If the association is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rental from the tenant. The managing agent or board, acting on behalf of the association and in the name of the association, may bid on the unit at foreclosure sale and acquire and hold, lease, mortgage, and convey the unit thereafter as the board deems reasonable. Action to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the unpaid assessments owed.

(b) Except as provided in subsection (g) or in the association documents, when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer’s successors and assigns shall not be liable for the share of the assessments by the association chargeable to the unit that became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of assessments shall be deemed to be assessments collectible from all of the unit owners, including the acquirer and the acquirer’s successors and assigns. The mortgagee

of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of assessments beginning:

- (1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;
- (2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;
- (3) Thirty days after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to chapter 667; or
- (4) Upon the recording of the instrument of conveyance;

whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person (other than the mortgagee of record or other purchaser of the unit) who appears at the hearing on the motion or a party to the foreclosure action (other than the mortgagee of record or other purchaser of the unit) requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance.

(c) Except as provided in section 667-B(c), no unit owner shall withhold any assessment claimed by the association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of regular and special assessments included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys' fees and costs, if any, included in the assessment;
- (4) That under Hawaii law, a unit owner has no right to withhold assessments for any reason;
- (5) That a unit owner has a right to demand mediation to resolve disputes about the amount or validity of an association's assessment; provided that the unit owner immediately pays the assessment in full and keeps assessments current; and
- (6) That payment in full of the assessment does not prevent the unit owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of a unit owner to the protection of all fair debt collection procedures mandated under federal and state law.

(d) A unit owner who pays an association the full amount claimed by the association may file a claim against the association in court, including small claims court, or require the association to mediate under section 421J-13 to resolve any disputes concerning the amount or validity of the association's claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for relief with a court; provided that a unit owner may only file for relief in court if all amounts claimed by the association are paid in full on or before the date of filing. If the unit owner fails to keep all association assessments current during the court hearing, the association may ask the court to temporarily suspend the proceedings. If the unit owner pays all association assessments within thirty days of the date of suspension, the unit owner may ask the court to recommence the proceedings. If the unit owner fails

to pay all association assessments by the end of the thirty-day period, the association may ask the court to dismiss the proceedings. The unit owner shall be entitled to a refund of any amounts paid to the association that are not owed.

(e) In conjunction with or as an alternative to foreclosure proceedings under subsection (a), where a unit is owner-occupied, the association may authorize its managing agent or board, after sixty days written notice to the unit owner of the unit's share of the assessments, to terminate the delinquent unit's access to the common areas and cease supplying a delinquent unit with any and all services normally supplied or paid for by the association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments, but need not be restored until payment in full is received.

(f) Before the board or managing agent may take the actions permitted under subsection (e), the board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the unit owners, as provided in the association documents, who are present in person or by proxy or as otherwise permitted by the association documents, at an annual or special meeting of the association or by the written consent of a voting interest equal to a quorum of the unit owners unless the association documents already permit the process.

(g) Subject to this subsection and subsection (h), the board may specially assess the amount of the unpaid regular periodic assessments for assessments against a person who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that:

- (1) A purchaser who holds a mortgage on a delinquent unit, which mortgage is not subordinate to the priority of lien by the association, and who acquires the delinquent unit through a judicial or nonjudicial foreclosure proceeding, including purchasing the delinquent unit at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and
- (2) A person who subsequently purchases the delinquent unit from the mortgagee referred to in paragraph (1) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; and provided further that the mortgagee or subsequent purchaser may require the association to provide, at no charge, a notice of the association's intent to claim a lien against the delinquent unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.

(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular periodic assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure.

(i) For purposes of subsections (g) and (h), the following definitions shall apply, unless the context requires otherwise:

"Completion" means:

- (1) In a nonjudicial power of sale foreclosure, when the affidavit required under section 667-33 is recorded; and
- (2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

"Regular periodic assessments" does not include:

- (1) Any special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to the association documents;
- (2) Late charges, fines, or penalties;
- (3) Interest assessed by the association;
- (4) Any lien arising out of the assessment; or
- (5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs.

§421J-B Association fiscal matters; collection of unpaid assessments from tenants or rental agents. (a) If a unit owner rents or leases the unit and is in default for thirty days or more in the payment of the unit's share of the regular assessments, the board, for as long as the default continues, may demand in writing and receive each month, or any other period of time for rental payment as provided in the lease, from any tenant occupying the unit or rental agent renting the unit, an amount sufficient to pay all sums due from the unit owner to the association, including interest, if any, but the amount shall not exceed the tenant's rent due at the time of demand. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

(b) Before taking any action under this section, the board shall give to the delinquent unit owner written notice of the board's intent to collect the rent owed. The notice shall:

- (1) Be sent both by first-class and certified mail;
- (2) Set forth the exact amount the association claims is due and owing by the unit owner; and
- (3) Indicate the intent of the board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The unit owner shall not take any retaliatory action against the tenant for payments made under this section.

(d) The payment of any portion of the unit's share of regular assessments by the tenant pursuant to a written demand by the board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the unit owner against a tenant.

(e) The board may not demand payment from the tenant pursuant to this section if:

- (1) A commissioner or receiver has been appointed to take charge of the unit pending a mortgage foreclosure;
- (2) A mortgagee is in possession of the unit pending a mortgage foreclosure; or
- (3) The tenant is served with a court order directing payment to a third party.

(f) In the event of any conflict between this section and any provision of chapter 521, the conflict shall be resolved in favor of this section; provided that if the tenant is entitled to an offset of rent under chapter 521, the tenant may deduct the offset from the amount due to the association, up to the limits stated in chapter 521. Nothing herein precludes the unit owner or tenant from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed.

(g) Before the board may take the actions permitted under subsection (a), the board shall adopt a written policy providing for the actions and have the policy approved by a majority vote of the unit owners, as provided in the association documents, who are present in person or by proxy or as otherwise

permitted by the association documents, at an annual or special meeting of the association or by the written consent of a voting interest equal to a quorum of the unit owners unless the association documents already permit the process.”

2. By amending section 421J-2 by adding a new definition to be appropriately inserted and to read:

“Assessment” means funds collected by an association from association members to operate and manage the association, maintain property within the planned community for the common use or benefit of association members, or provide services to association members. The term also means expenditures made by, or financial liabilities of, the association for operation of the property and includes any allocations to reserves.”

SECTION 3. Chapter 667, Hawaii Revised Statutes, is amended as follows:

1. By adding a new part I to read:

“PART I. GENERAL PROVISIONS

§667-1 Definitions. As used in this chapter:

“Approved budget and credit counselor” means a Hawaii-based budget and credit counseling agency that has received approval from a United States trustee or bankruptcy administrator to provide instructional courses concerning personal financial management pursuant to title 11 United States Code section 111.

“Approved housing counselor” means a Hawaii-based housing counseling agency that has received approval from the United States Department of Housing and Urban Development to provide housing counseling services pursuant to section 106(a)(2) of the Housing and Urban Development Act of 1968, title 12 United States Code section 1701x, as the agency appears on the United States Department of Housing and Urban Development website.

“Assessment” has the same meaning as “common expenses” in section 514B-3 and “assessment” in section 421J-2.

“Association” has the same meaning as defined in sections 421J-2 and 514B-3.

“Association documents” has the same meaning as defined in section 421J-2 and includes the “declaration” defined in section 514B-3 and the “by-laws” described in section 514B-108, respectively.

“Association lien” has the same meaning as the lien established under section 421J-A or 514B-146.

“Borrower” means the borrower, maker, cosigner, or guarantor under a mortgage agreement.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Dispute resolution” means a facilitated negotiation under part V between a mortgagor and mortgagee for the purpose of reaching an agreement for mortgage loan modification or other agreement in an attempt to avoid foreclosure or to mitigate damages if foreclosure is unavoidable.

“Foreclosure notice” means notice of default and intention to foreclose prepared pursuant to section 667-22.

“Mailed” means to be sent by first class mail, postage prepaid, unless otherwise expressly directed in this chapter.

“Mortgage” means a mortgage, security agreement, or other document under which property is mortgaged, encumbered, pledged, or otherwise ren-

dered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

"Mortgage agreement" includes the mortgage, the note or debt document, or any document amending any of the foregoing.

"Mortgaged property" means the property that is subject to the lien of the mortgage.

"Mortgagee" means the current holder of record of the mortgagee's or the lender's interest under the mortgage or the current mortgagee's or lender's duly authorized agent.

"Mortgagor" means the mortgagor or borrower named in the mortgage and, unless the context otherwise indicates, includes the current owner of record of the mortgaged property whose interest is subject to the mortgage.

"Neutral" means a person who is a dispute resolution specialist assigned to facilitate the dispute resolution process required by part V.

"Nonjudicial foreclosure" means foreclosure under power of sale.

"Owner-occupant" means a person, at the time that a notice of default and intention to foreclose is served on the mortgagor under the power of sale:

- (1) Who owns an interest in the residential property, and the interest is encumbered by the mortgage being foreclosed; and
- (2) For whom the residential property is and has been the person's primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served.

"Power of sale" or "power of sale foreclosure" means a nonjudicial foreclosure when the mortgage contains, authorizes, permits, or provides for a power of sale, a power of sale foreclosure, a power of sale remedy, or a nonjudicial foreclosure.

"Property" means property (real, personal, or mixed), an interest in property (including fee simple, leasehold, life estate, reversionary interest, and any other estate under applicable law), or other interests that can be subject to the lien of a mortgage.

"Record" means to record or file a document in the office of the assistant registrar of the land court under chapter 501 or to record a document in the bureau of conveyances under chapter 502, or both, as applicable.

"Residential property" means real property that is improved and used for residential purposes.

"Serve", when referring to providing notice of intention to foreclose or notice of default and intention to foreclose pursuant to a nonjudicial foreclosure, means to have service of the notice of default and intention to foreclose made in accordance with the service of process or the service of summons under the Hawaii rules of civil procedure and under sections 634-35 and 634-36, excluding however, any return or affidavit of service obligations required therein.

"Time share interest" has the same meaning as in section 514E-1.

"Unit" has the same meaning as in sections 421J-2 and 514B-3.

"Unit owner" has the same meaning as "member" in section 421J-2 and "unit owner" in section 514B-3."

2. By adding a new part to be appropriately designated and to read:

"PART . ASSOCIATION ALTERNATE POWER OF SALE FORECLOSURE PROCESS

§667-A Alternate power of sale process. The power of sale process in this part is an alternative process for associations to the foreclosure by action in part IA and the foreclosure by power of sale in part II.

§667-B Notice of default and intention to foreclose; contents; distribution; alternative remedies for failure to serve. (a) When a unit owner has failed to pay an assessment, and when the association intends to conduct a power of sale foreclosure under this part, the association shall prepare a written notice of default and intention to foreclose addressed to the unit owner. The notice of default and intention to foreclose shall state:

- (1) The name and address of the association;
- (2) The name and last known address of the unit owners;
- (3) With respect to the unit, the address or a description of its location, tax map key number, and certificate of title or transfer certificate of title number if registered in the land court;
- (4) The description of the default or, if the default is a monetary default, an itemization of the delinquent amount;
- (5) The action required to cure the default, including the delinquent amount and the estimated amount of the association's attorney's fees and costs, and all other fees and costs related to the default estimated to be incurred by the association by the deadline date;
- (6) The date by which the default must be cured, which shall be within sixty days after service of the notice of default and intention to foreclose;
- (7) A statement that if the default is not cured by the deadline date stated in the notice of default and intention to foreclose, the entire unpaid balance of the moneys owed to the association will become due, that the association intends to conduct a power of sale foreclosure to sell the unit at a public sale without any court action and without going to court, and that the association or any other person may acquire the unit at the public sale;
- (8) A statement that if the default is not cured by the deadline date stated in the notice of default and intention to foreclose, the association may publish the public notice of the public sale in a newspaper of general circulation or on a state website, pursuant to section 667-F(d);
- (9) The name, address, electronic address, and telephone number of the attorney who is representing the association; provided that the attorney shall be licensed to practice law in the State and physically located in the State; and
- (10) Notice of the right of the unit owner to submit a payment plan within thirty days pursuant to subsection (c).

(b) The notice of default and intention to foreclose shall also contain wording substantially similar to the following in all capital letters and printed in not less than fourteen-point font:

"IF THE DEFAULT ON THE PAYMENT OF ASSESSMENTS CONTINUES AFTER THE DEADLINE DATE IN THIS NOTICE, THE UNIT MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT ACTION AND WITHOUT GOING TO COURT.

YOU MAY HAVE CERTAIN LEGAL RIGHTS OR DEFENSES. FOR ADVICE, YOU SHOULD CONSULT WITH AN ATTORNEY LICENSED IN THIS STATE.

ALL FUTURE NOTICES AND CORRESPONDENCE WILL BE MAILED TO YOU AT THE ADDRESS AT WHICH YOU RECEIVED THIS NOTICE UNLESS YOU SEND WRITTEN INSTRUCTIONS TO THIS OFFICE INFORMING THIS OFFICE OF A DIFFERENT ADDRESS. THE

WRITTEN INSTRUCTIONS MUST BE SENT TO THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT REQUESTED."

(c) A unit owner may submit a payment plan within thirty days after service of a notice of default and intention to foreclose on the unit owner. The unit owner shall submit the payment plan to the association or its attorney by certified mail return receipt requested or by hand delivery. The association shall not reject a reasonable payment plan. A unit owner may also cure the default within sixty days after service of a notice of default and intention to foreclose on the unit owner by paying the association the full amount of the default, including the foreclosing association's attorneys' fees and costs, and all other fees and costs related to the default that are incurred or estimated to be incurred by the foreclosing association. From and after the date that the unit owner gives written notice to the association of the unit owner's intent to cure the default or timely submits a payment plan, any nonjudicial foreclosure of the lien shall be stayed during the sixty-day period to cure the default or during the term of the payment plan or a longer period that is agreed upon by the parties. A unit owner's failure to strictly perform any agreed-upon payment plan shall entitle the association to pursue its remedies without further delay.

For purposes of this section, "reasonable payment plan" means a plan that provides for:

- (1) Timely payment of all assessments that become due after the date that the payment plan is proposed; and
- (2) Additional monthly payments of an amount sufficient to cure the default, within a reasonable period under the circumstances as determined by the board of directors in its discretion; provided that a period of up to twelve months shall be deemed reasonable; and provided further that the board of directors shall have the discretion to agree to a payment plan in excess of twelve months.

(d) The notice of default and intention to foreclose shall also include contact information for approved housing counselors and approved budget and credit counselors.

(e) The association shall have the notice of default and intention to foreclose served on:

- (1) The unit owner;
 - (2) Any prior or junior creditors who have a recorded lien on the unit before the recordation of the notice of default and intention to foreclose under section 667-C;
 - (3) The state director of taxation;
 - (4) The director of finance of the county where the unit is located; and
 - (5) Any other person entitled to receive notice under section 667-5.5.
- (f) If the association is unable to serve the notice of default and intention to foreclose on the unit owner or any other party listed in subsection (e)(2) to (5) within sixty days, the association may:

- (1) File a special proceeding in the circuit court of the circuit in which the unit is located, for permission to proceed with a nonjudicial foreclosure by serving the unit owner only by publication and posting;
- (2) Proceed with a nonjudicial foreclosure of the unit; provided that if the association proceeds without the permission of the court, the association shall not be entitled to obtain a deficiency judgment against the unit owner, and the unit owner shall have one year from the date the association records the deed in the nonjudicial foreclo-

sure to redeem the unit by paying the unit owner's delinquency to the association; or

- (3) Take control of the unit if the unit is unoccupied, after giving notice to the unit owner at the unit owner's last known address as shown on the records of the association or as determined by the association as part of its due diligence to serve notice to the owner. The association's authority to take control of the unit pursuant to this paragraph shall be exercised solely for the purpose of renting the unit to generate rental income to pay the unit owner's delinquency, and the association shall acquire no legal title to the unit. In addition, the association shall credit the net rental proceeds generated from the rental of the unit to the owner's delinquency. For purposes of this paragraph, "net rental proceeds" means the rental proceeds remaining each month after deducting:
 - (A) The unit's regular monthly assessments that come due while the association controls the unit pursuant to this subsection;
 - (B) Any rental agent commissions; and
 - (C) Expenses incurred by the association in maintaining the unit in rentable condition.

If the unit owner pays the full amount of the unit owner's delinquency to the association, the association shall return control of the unit to the unit owner; provided that the full amount of the unit owner's delinquency shall be calculated by deducting the total net rental proceeds collected by the association, if any, from the unit owner's delinquency.

§667-C Recordation of notice of default and intention to foreclose. Before the deadline date in the notice of default and intention to foreclose, the notice may be recorded in a recordable form in a manner similar to recordation of notices of pendency of action under section 501-151 or section 634-51, or both, as applicable. The recorded notice of default and intention to foreclose shall have the same effect as a notice of pendency of action. From and after the recordation of the notice of default and intention to foreclose, any person who becomes a purchaser or encumbrancer of the unit shall be deemed to have constructive notice of the power of sale foreclosure and shall be bound by the foreclosure.

§667-D Cure of default. (a) If the default is cured as required by the notice of default and intention to foreclose, or if the parties have agreed on a payment plan, the association shall rescind the notice of default and intention to foreclose. Within fourteen days of the date of the cure or an agreement on a payment plan, the association shall so notify any person who was served with the notice of default and intention to foreclose. If the notice of default and intention to foreclose was recorded, a release of the notice of default and intention to foreclose shall be recorded.

(b) If the default is not cured as required by the notice of default and intention to foreclose, or the parties have not agreed on a payment plan, the association, without filing a court action and without going to court, may foreclose the association's lien under power of sale to sell the unit at a public sale.

§667-E Date of public sale of unit; place of sale. (a) The public sale of the unit shall take place on the later of the following:

- (1) At least sixty days after the public notice of the public sale is distributed under section 667-F; or

- (2) At least fourteen days after the date of the publication of the third public notice advertisement under section 667-F(d).
- (b) The public sale of the unit shall be held only in the county where the unit is located; provided that the public sale shall be held only on grounds or at facilities under the administration of the State, as follows:

- (1) At the state capitol, for a public sale of a unit located in the city and county of Honolulu;
- (2) At a state facility in Hilo, for a public sale of a unit located in the districts of Hamakua, north Hilo, south Hilo, or Puna;
- (3) At a state facility in Kailua-Kona, for a public sale of a unit located in the districts of north Kohala, south Kohala, north Kona, south Kona, or Kau;
- (4) At a state facility in the county seat of Maui, for a public sale of a unit located in the county of Maui; and
- (5) At a state facility in the county seat of Kauai, for a public sale of a unit located in the county of Kauai;

as designated by the department of accounting and general services; provided further that no public sale shall be held on grounds or at facilities under the administration of the judiciary. The public sale shall be held during business hours on a business day.

- (c) The public sale of the unit shall be conducted by the association on the date, at the time, and at the place described in the public notice of the public sale.

§667-F Public notice of public sale; contents; distribution; publication. (a) The association shall prepare the public notice of the public sale. The public notice shall state:

- (1) The date, time, and place of the public sale;
- (2) The unpaid balance of the moneys owed to the association;
- (3) A description of the unit, including the address and the tax map key number of the unit;
- (4) The name of the unit owner;
- (5) The name of the association;
- (6) The name of any prior or junior creditors having a recorded lien on the unit before the recordation of the notice of default and intention to foreclose under section 667-C;
- (7) The name, the address in the State, and the telephone number in the State of the person in the State conducting the public sale; and
- (8) The terms and conditions of the public sale.

- (b) The public notice shall also contain wording substantially similar to the following in all capital letters:

“THE DEFAULT UNDER THE ASSOCIATION DOCUMENTS MAY BE CURED NO LATER THAN THREE BUSINESS DAYS BEFORE THE DATE OF THE PUBLIC SALE OF THE UNIT BY PAYING THE ENTIRE AMOUNT THAT WOULD BE OWED TO THE ASSOCIATION PLUS THE ASSOCIATION’S ATTORNEY’S FEES AND COSTS, AND ALL OTHER FEES AND COSTS INCURRED BY THE FORECLOSING ASSOCIATION RELATED TO THE DEFAULT, UNLESS OTHERWISE AGREED TO BETWEEN THE ASSOCIATION AND THE UNIT OWNER. THERE IS NO RIGHT TO CURE THE DEFAULT OR ANY RIGHT OF REDEMPTION AFTER THAT TIME. IF THE DEFAULT IS SO CURED, THE PUBLIC SALE SHALL BE CANCELED.”

(c) If the default is not cured as required by the notice of default and intention to foreclose, the association shall have a copy of the public notice of the public sale of the unit:

- (1) Mailed or delivered to the unit owners at their respective last known addresses;
- (2) Mailed or delivered to any prior or junior creditors having a recorded lien on the unit before the recordation of the notice of default and intention to foreclose under section 667-C;
- (3) Mailed or delivered to the state director of taxation;
- (4) Mailed or delivered to the director of finance of the county where the unit is located;
- (5) Posted on the unit or on such other real property of which the unit is a part; and
- (6) Mailed or delivered to any other person entitled to receive notice under section 667-5.5 or 667-21.5.

(d) The association shall have the public notice of the public sale:

- (1) Printed in not less than seven-point font and published in the classified section of a newspaper of general circulation in the geographic area in which the unit is located. A person may apply to the circuit court for an order confirming a newspaper to be of general circulation for purposes of this paragraph, which the court shall grant upon proof of compliance with this paragraph. The public notice shall be published once each week for three consecutive weeks, constituting three publications. The public sale shall take place no sooner than fourteen days after the date of the publication of the third public notice advertisement; or
- (2) Not less than twenty-eight days before the date of the public sale, published on a state website at the discretion of the agency that maintains the website; provided that the public notice shall be published at least once in the format described in paragraph (1) at least fourteen days prior to the public sale.

(e) As used in subsection (d):

“General circulation” refers to a newspaper that:

- (1) Contains news of a general nature; and
- (2) Is distributed within the geographic area where the unit is located:
 - (A) At least weekly;
 - (B) For a minimum of one year unless interrupted by strike, natural disaster, or act of war or terror; and
 - (C) To a minimum of three per cent of the residents of the geographic area, as determined by the last decennial United States census and as verified by an independent audit.

“Geographic area” means:

- (1) The real property tax zone of the unit, as shown on the real property tax maps kept by the real property tax assessment division of the county of Hawaii, if the unit is located in the county of Hawaii; or
- (2) The county in which the unit is located, if the unit is located in the city and county of Honolulu or the county of Maui or Kauai.

§667-G Postponement, cancellation of sale. (a) The public sale may be either postponed or canceled by the association. Notice of the postponement or the cancellation of the public sale shall be:

- (1) Announced by the association at the date, time, and place of the last scheduled public sale; and

(2) Provided to any other person who is entitled to receive the notice of default under section 667-B.

(b) If there is a postponement of the public sale of the unit, a new public notice of the public sale shall be published once in the format described in section 667-F. The new public notice shall state that it is a notice of a postponed sale. The public sale shall take place no sooner than fourteen days after the date of the publication of the new public notice. Not less than fourteen days before the date of the public sale, a copy of the new public notice shall be posted on the unit or on another real property of which the unit is a part, and it shall be mailed or delivered to the unit owner and to any other person entitled to receive notice under section 667-B(e).

(c) Upon the fourth postponement of every series of four consecutive postponements, the association shall follow all of the public notice of public sale requirements of section 667-F, including the requirements of mailing and posting under section 667-F(c) and of publication under section 667-F(d).

(d) The default under the association documents may be cured no later than three business days before the date of the public sale of the unit by paying the entire amount that would be owed to the association if the payments under the association documents had not been accelerated, plus the association's attorney's fees and costs, and all other fees and costs incurred by the association related to the default, unless otherwise agreed to between the association and the unit owner. There is no right to cure the default or any right of redemption after that time. If the default is so cured, the public sale shall be canceled.

§667-H Authorized bidder; successful bidder. Any person, including the association, shall be authorized to bid for the unit at the public sale and to purchase the unit. The highest bidder who meets the requirements of the terms and conditions of the public sale shall be the successful bidder. The public sale shall be considered as being held when the unit is declared by the association as being sold to the successful bidder. When the public sale is held, the successful bidder at the public sale, as the purchaser, shall make a nonrefundable downpayment to the association of not less than ten per cent of the highest successful bid price. If the successful bidder is the association, the downpayment requirement may be satisfied by offset and a credit bid up to the amount of the lien debt.

§667-I Successful bidder's failure to comply; forfeiture of downpayment. If the successful bidder later fails to comply with the terms and conditions of the public sale or fails to complete the purchase within forty-five days after the public sale is held, the downpayment shall be forfeited by that bidder. The forfeited downpayment shall be credited by the association first towards the association's attorney's fees and costs, then towards the fees and costs of the power of sale foreclosure, and any balance towards the moneys owed to the association. The association, in its discretion, may then accept the bid of the next highest bidder who meets the requirements of the terms and conditions of the public sale or may begin the public sale process again.

§667-J Conveyance of property on payment of purchase price; distribution of sale proceeds. (a) After the purchaser completes the purchase by paying the full purchase price and the costs for the purchase, the unit shall be conveyed to the purchaser by a conveyance document. The conveyance document shall be in a recordable form and shall be signed by the association in the association's name. The unit owner shall not be required to sign the conveyance document.

(b) From the sale proceeds, after paying in the following order:

(1) The association's attorney's fees and costs;

- (2) The fees and costs of the power of sale foreclosure;
- (3) The moneys owed to the association; and
- (4) All other liens and encumbrances in the order of priority as a matter of law,

the balance of the sale proceeds shall be distributed by the association to junior creditors having valid liens on the unit in the order of their priority and not pro rata. Any remaining surplus after payment in full of all valid lien creditors shall be distributed to the unit owner.

(c) Lien creditors prior to the association shall not be forced to their right of recovery. However, the association and any prior lien creditor may agree in writing that the proceeds from the sale will be distributed by the association to the prior lien creditor towards the payment of moneys owed to the prior lien creditor before any moneys are paid to the association.

§667-K Affidavit after public sale; contents. (a) After the public sale is held, the association shall sign an affidavit under penalty of perjury:

- (1) Stating that the power of sale foreclosure was made pursuant to the power of sale provision in the law or association documents;
- (2) Stating that the power of sale foreclosure was conducted as required by this part;
- (3) Summarizing what was done by the association;
- (4) Attaching a copy of the recorded notice of default and intention to foreclose; and
- (5) Attaching a copy of the last public notice of the public sale.

(b) The recitals in the affidavit required under subsection (a) may, but need not, be substantially in the following form:

- (1) I am duly authorized to represent or act on behalf of _____ (name of association) ("association") regarding the following power of sale foreclosure. I am signing this affidavit in accordance with the alternate power of sale foreclosure law (Chapter 667, Part , Hawaii Revised Statutes);
- (2) The association is an "association" as defined in the power of sale foreclosure law;
- (3) The power of sale foreclosure is of an association lien. If the lien was recorded, the lien was dated _____, and recorded in the _____ (bureau of conveyances or office of the assistant registrar of the land court) as _____ (recordation information). The unit is located at: _____ (address or description of location) and is identified by tax map key number: _____. The legal description of the property, including the certificate of title or transfer certificate of title number if registered with the land court, is attached as Exhibit "A";
- (4) Pursuant to the power of sale provision of law or association documents, the power of sale foreclosure was conducted as required by the power of sale foreclosure law. The following is a summary of what was done:
 - (A) A notice of default and intention to foreclose was served on the unit owner and the following person: _____. The notice of default and intention to foreclose was served on the following date and in the following manner: _____;
 - (B) The date of the notice of default and intention to foreclose was _____ (date). The deadline in the no-

tice for curing the default was _____ (date), which deadline date was at least sixty days after the date of the notice;

- (C) The notice of default and intention to foreclose was recorded before the deadline date in the _____ (bureau of conveyances or office of the assistant registrar of the land court). The notice was recorded on _____ (date) as document no. _____. A copy of the recorded notice is attached as Exhibit "1";
- (D) The default was not cured by the deadline date in the notice of default and intention to foreclose;
- (E) A public notice of the public sale was initially published in the classified section of the _____, in accordance with section 667-F(d), Hawaii Revised Statutes, once each week for three consecutive weeks on the following dates: _____. A copy of the affidavit of publication for the last public notice of the public sale is attached as Exhibit "2". The date of the public sale was _____ (date). The last publication was not less than fourteen days before the date of the public sale;
- (F) The public notice of the public sale was sent to the unit owner, to the state director of taxation, to the director of finance of the county where the unit is located, and to the following: _____. The public notice was sent on the following dates and in the following manner: _____. Those dates were after the deadline date in the notice of default and intention to foreclose, and those dates were at least sixty days before the date of the public sale;
- (G) The public notice of the public sale was posted on the unit or on such other real property of which the unit is a part on _____ (date). That date was at least sixty days before the date of the public sale;
- (H) A public sale of the unit was held on a business day during business hours on: _____ (date), at _____ (time), at the following location: _____. The highest successful bidder was _____ (name) with the highest successful bid price of \$_____; and
- (I) At the time the public sale was held, the default was not cured; and

(5) This affidavit is signed under penalty of perjury.

§667-L Recordation of affidavit, conveyance document; effect. (a) The affidavit required under section 667-K and the conveyance document shall be recorded no earlier than ten days after the public sale is held but not later than forty-five days after the public sale is held. The affidavit and the conveyance document may be recorded separately and on different days. After the recordation, the association shall mail or deliver a recorded copy to those persons entitled to receive the public notice of the public sale under section 667-F(c).

(b) When both the affidavit and the conveyance document are recorded:

- (1) The sale of the unit is considered completed;

- (2) All persons claiming by, through, or under the unit owner and all other persons having liens on the unit junior to the lien of the association shall be forever barred of and from any and all right, title, interest, and claims at law or in equity in and to the unit and every part of the unit, except as otherwise provided by law;
- (3) The lien of the association and all liens junior in priority to the lien of an association shall be automatically extinguished from the unit; and
- (4) The purchaser shall be entitled to immediate and exclusive possession of the unit.

(c) The unit owner and any person claiming by, through, or under the unit owner and who is remaining in possession of the unit after the recordation of the affidavit and the conveyance document shall be considered a tenant at sufferance subject to eviction or ejectment. The purchaser may bring an action in the nature of summary possession under chapter 666, ejectment, or trespass or may bring any other appropriate action in a court where the unit is located to obtain a writ of possession, a writ of assistance, or any other relief. In any such action, the court shall award the prevailing party its reasonable attorneys' fees and costs and all other reasonable fees and costs, all of which are to be paid for by the non-prevailing party.

§667-M Recordation; full satisfaction of debt by unit owner. Except as provided in subsection 667-B(f)(2), the recordation of both the conveyance document and the affidavit shall not operate as full satisfaction of the debt owed by the unit owner to the association unless the sale proceeds from the unit or the amounts paid by a purchaser under the special assessment permitted by section 421J-A or 514B-146 are sufficient to satisfy the unit owner's debt to the association, including the association's legal fees and costs. The debts of other lien creditors are unaffected except as provided in this part.

§667-N Prohibited conduct. It shall be a prohibited practice for any association to engage in any of the following practices:

- (1) Holding a public sale on a date, at a time, or at a place other than that described in the public notice of the public sale or a properly noticed postponement;
- (2) Specifying a fictitious place in the public notice of the public sale;
- (3) Conducting a postponed public sale on a date other than the date described in the new public notice of the public sale; or
- (4) Completing or attempting to complete nonjudicial foreclosure proceedings against a unit owner in violation of section 667-B(c)."

3. By adding four new sections to part IA to be appropriately designated and to read:

"§667-O Attorney affirmation in judicial foreclosure. Any attorney who files on behalf of a mortgagee seeking to foreclose on a residential property under this part shall sign and submit an affirmation that the attorney has verified the accuracy of the documents submitted, under penalty of perjury and subject to applicable rules of professional conduct. The affirmation shall be in substantially the following form:

____ CIRCUIT COURT OF THE STATE OF HAWAII

Plaintiff,

AFFIRMATION

v.

Defendant(s)

Mortgaged Premises:

Note: During and after August 2010, numerous and widespread insufficiencies in foreclosure filings in various courts around the nation were reported by major mortgage lenders and other authorities, including failure to review documents and files to establish standing and other foreclosure requisites; filing of notarized affidavits that falsely attest to such review and to other critical facts in the foreclosure process; and "robosignature" of documents.

* * *

[____], Esq., pursuant to Hawaii Revised Statutes §667-O and under the penalties of perjury, affirms as follows:

1. I am an attorney at law duly licensed to practice in the state of Hawaii and am affiliated with the Law Firm of _____, the attorneys of record for Plaintiff in the above-captioned mortgage foreclosure action. As such, I am fully aware of the underlying action, as well as the proceedings had herein.
2. On [date], I communicated with the following representative or representatives of Plaintiff, who informed me that he/she/they (a) personally reviewed plaintiff's documents and records relating to this case for factual accuracy; and (b) confirmed the factual accuracy of the allegations set forth in the Complaint and any supporting affidavits or affirmations filed with the Court, as well as the accuracy of the notarizations contained in the supporting documents filed therewith.

Name

Title

3. Based upon my communication with [persons specified in item 2], as well as upon my own inspection and other reasonable inquiry under the circumstances, I affirm that, to the best of my knowledge, information, and belief, the Summons, Complaint, and other papers filed or submitted to the Court in this matter contain no false statements of fact or law and that plaintiff has legal standing to bring this foreclosure action. I understand my continuing obligation to amend this Affirmation in light of newly discovered material facts following its filing.
4. I am aware of my obligations under Hawaii Rules of Professional Conduct.

DATED:

N.B.: Counsel may augment this affirmation to provide explanatory details, and may file supplemental affirmations or affidavits for the same purpose."

§667-P Attorney affirmation in judicial foreclosure. An attorney who files a complaint in a mortgage foreclosure action shall affirm in writing, under penalty of perjury, that to the best of the attorney's knowledge, information, and belief the allegations contained in the complaint are warranted by existing law and have evidentiary support.

§667-Q Association foreclosures; cure of default; payment plan. If a foreclosure by action is initiated by an association pursuant to section 421J-A, 514A-90, or 514B-146:

- (1) At the time of the commencement of the foreclosure by action, the association shall serve the unit owner with written contact information for approved housing counselors and approved budget and credit counselors;
- (2) A unit owner may cure the default within sixty days after service of the association's complaint for foreclosure by action by paying the association the full amount of the default, including the foreclosing association's attorneys' fees and costs, and all other fees and costs related to the default, along with any additional amounts estimated to be incurred by the foreclosing association;
- (3) A unit owner may submit a payment plan within thirty days after service of the association's complaint for foreclosure by action. The unit owner shall submit the payment plan to the association or its attorney by certified mail return receipt requested or by hand delivery. The association shall not reject a reasonable payment plan. A unit owner's failure to strictly perform any agreed-upon payment plan shall entitle the association to pursue its remedies without further delay.
For purposes of this paragraph, "reasonable payment plan" means a plan that provides for:
 - (A) Timely payment of all assessments that become due after the date that the payment plan is proposed; and
 - (B) Additional monthly payments of an amount sufficient to cure the default, within a reasonable period under the circumstances as determined by the board of directors in its discretion; provided that a period of up to twelve months shall be deemed reasonable; and provided further that the board of directors shall have the discretion to agree to a payment plan in excess of twelve months;
- (4) From and after the date that the unit owner gives written notice to the association of the unit owner's intent to cure the default pursuant to paragraph (2) or timely submits a payment plan pursuant to paragraph (3), any foreclosure by action shall be stayed during the sixty-day period to cure the default or during the term of the payment plan or a longer period that is agreed upon by the parties;
- (5) If the default is cured pursuant to paragraph (2), the association shall dismiss the foreclosure by action. If the parties have agreed on a payment plan pursuant to paragraph (3), the association shall stay the foreclosure by action. Within fourteen days of the date of the cure or an agreement on a payment plan, the association shall notify any person who was served as a result of the foreclosure by action that the action has been dismissed or stayed, as the case may be. If a notice of pendency of action for the foreclosure by action was recorded, a release of the notice of pendency of action shall be recorded if the action is dismissed; and

- (6) If the default is not cured pursuant to paragraph (2), or the parties have not agreed on a payment plan pursuant to paragraph (3), the association may continue to foreclose the association's lien under foreclosure by action.

§667-R Publication of notice of public sale. (a) The foreclosing mortgagee or association in a foreclosure by action shall have the public notice of the public sale:

- (1) Printed in not less than seven-point font and published in the classified section of a newspaper of general circulation in the geographic area in which the mortgaged property or unit is located. A person may apply to the circuit court for an order confirming a newspaper to be of general circulation for purposes of this paragraph, which the court shall grant upon proof of compliance with this paragraph. The public notice shall be published once each week for three consecutive weeks, constituting three publications. The public sale shall take place no sooner than fourteen days after the date of the publication of the third public notice advertisement; or
- (2) Not less than twenty-eight days before the date of the public sale, published on a state website at the discretion of the agency that maintains the website; provided that the public notice shall be published at least once in the format described in paragraph (1) at least fourteen days prior to the public sale.

(b) As used in this section:

"General circulation" refers to a newspaper that:

- (1) Contains news of a general nature; and
- (2) Is distributed within the geographic area where the mortgaged property or unit is located:
 - (A) At least weekly;
 - (B) For a minimum of one year unless interrupted by strike, natural disaster, or act of war or terror; and
 - (C) To a minimum of three per cent of the residents of the geographic area, as determined by the last decennial United States census and as verified by an independent audit.

"Geographic area" means:

- (1) The real property tax zone of the mortgaged property or unit, as shown on the real property tax maps kept by the real property tax assessment division of the county of Hawaii, if the mortgaged property or unit is located in the county of Hawaii; or
 - (2) The county in which the mortgaged property or unit is located, if the mortgaged property or unit is located in the city and county of Honolulu or the county of Maui or Kauai."
4. By amending its title to read:

**"CHAPTER 667
[MORTGAGE] FORECLOSURES"**

5. By designating part I as part IA and amending the title of that part to read:

**"PART [H.] IA. FORECLOSURE BY ACTION [OR
FORECLOSURE BY POWER OF SALE]"**

6. By designating section 667-1 as section 667-1.5.
7. By amending the title of part II to read:

“~~[[[PART II,]]] ALTERNATE POWER OF SALE FORECLOSURE PROCESS~~”

PART III

SECTION 4. Section 454M-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A mortgage servicer licensed or acting under this chapter, in addition to any other duties imposed by law, shall:

- (1) Safeguard and account for any money handled for the borrower;
- (2) Act with reasonable skill, care, timeliness, promptness, and diligence;
- (3) Disclose to the commissioner in the servicer’s license application and each yearly renewal a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities;
- (4) File a report with each yearly renewal statement in a form and format acceptable to the director detailing the servicer’s activities in this State, including:
 - (A) The number of mortgage loans the servicer is servicing;
 - (B) The type and characteristics of loans serviced in this State;
 - (C) The number of serviced loans in default, along with a breakdown of thirty-, sixty-, and ninety-day delinquencies;
 - (D) Information on loss mitigation activities, including details on workout arrangements undertaken;
 - (E) Information on foreclosures commenced in this State;
 - (F) The affiliations of the mortgage servicer, including any lenders or mortgagees for which the mortgage servicer provides service, any subsidiary or parent entities of the mortgage servicer, and a description of the authority held by the mortgage servicer through its affiliations; and
 - (G) Any other information that the commissioner may require; and
- (5) Maintain an office in the State that is staffed by at least one agent or employee for the purposes of addressing consumer inquiries or complaints and accepting service of process; provided that the mortgage servicer’s business constitutes at least a twenty per cent share of the portion of the total mortgage loan service market in the State that was serviced by mortgage servicers licensed under this chapter within the previous calendar year; and provided further that nothing in this section shall prohibit a mortgagee as defined by section ~~[667-21]~~ 667-1 or a mortgage servicer from contracting with a licensee that maintains an office in this State in conformity with this section for the purposes of addressing consumer inquiries or complaints and accepting service of process.”

SECTION 5. Section 454M-10, Hawaii Revised Statutes, is amended to read as follows:

“§454M-10 Penalty. Any person who violates any provision of this chapter may be subject to an administrative fine of ~~[at least \$1,000 and]~~ not more than \$7,000 for each violation; provided that \$1,000 of the aggregate fine amount shall be deposited into the mortgage foreclosure dispute resolution special fund established pursuant to section 667-86.”

SECTION 6. Section 501-151, Hawaii Revised Statutes, is amended to read as follows:

"§501-151 Pending actions, judgments; recording of, notice. No writ of entry, action for partition, or any action affecting the title to real property or the use and ~~[occupation]~~ occupancy thereof or the buildings thereon, and no judgment, nor any appeal or other proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a full memorandum thereof, containing also a reference to the number of the certificate of title of the land affected is filed or recorded and registered. Except as otherwise provided, every judgment shall contain or have endorsed on it the State of Hawaii general excise taxpayer identification number, the federal employer identification number, or the last four digits only of the social security number for persons, corporations, partnerships, or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recording of the judgment. This section does not apply to attachments, levies of execution, or to proceedings for the probate of wills, or for administration in a probate court; provided that in case notice of the pendency of the action has been duly registered it is sufficient to register the judgment in the action within sixty days after the rendition thereof.

As used in this chapter "judgment" includes an order or decree having the effect of a judgment.

Notice of the pendency of an action in a United States District Court, as well as a court of the State of Hawaii, may be recorded.

Notice of opening a dispute resolution case as provided in section 667-79 may be recorded.

Foreclosure notice as provided in section ~~[667-14]~~ 667-23 may be recorded.

The party seeking registration of a judgment shall redact the first five digits of any social security number by blocking the numbers out on the copy of the judgment to be filed or recorded."

SECTION 7. Section 501-241, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Without limiting the generality of subsection (a), the following instruments need not be registered pursuant to this chapter to be effective and shall be recorded in the bureau of conveyances pursuant to chapter 502:

- (1) An assignment or other instrument transferring a leasehold time share interest;
- (2) A mortgage or other instrument granting a lien on a leasehold time share interest;
- (3) An agreement of sale for the sale of a leasehold time share interest. Any such agreement of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;

- (4) A lien or notice of lien pertaining to a leasehold time share interest in favor of a time share owners association, an association of owners under chapter 514A or 514B, or a similar homeowner's association;
- (5) A judgment, decree, order of court, attachment, writ, or other process against a leasehold time share interest;
- (6) A mechanic's or materialman's lien or other lien upon a leasehold time share interest;
- (7) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a leasehold time share interest and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to ~~[section 667-5;]~~ chapter 667 or otherwise;
- (8) A power of attorney given by the owner of a leasehold time share interest or the vendor or vendee under an agreement of sale for the sale of a leasehold time share interest, a mortgagee or other lienor having a mortgage or lien upon a leasehold time share interest, or another party holding a claim or encumbrance against or an interest in a leasehold time share interest; or
- (9) An instrument assigning, extending, continuing, dissolving, discharging, releasing in whole or in part, reducing, canceling, extinguishing, or otherwise modifying or amending any of the foregoing instruments."

SECTION 8. Section 501-263, Hawaii Revised Statutes, is amended to read as follows:

"[§501-263] Effect of deregistration in specific cases. Notwithstanding section 501-262(a)(3), the following documents, instruments, and papers need not be registered pursuant to this chapter to be effective and shall be recorded in the bureau of conveyances pursuant to chapter 502:

- (1) Any document, instrument, or paper assigning, extending, continuing, dissolving, discharging, releasing in whole or in part, reducing, canceling, extinguishing, or otherwise modifying or amending any of the following documents, instruments, or papers that have been registered pursuant to this chapter and that pertain to deregistered land:
 - (A) A mortgage;
 - (B) An agreement of sale for the sale of a fee time share interest or interest in other deregistered land. After the recordation of the certificate of title, any agreement of sale shall be subject to section 502-85 and shall not be subject to section 501-101.5;
 - (C) A correction deed, correction mortgage, or other document, instrument, or paper correcting a document, instrument, or paper registered pursuant to this chapter;
 - (D) A lien or claim of lien on a fee time share interest held or claimed by a time share owners association, an association of apartment owners, or other homeowners' association or a lien or claim on an interest in other deregistered land held by a lienor or person claiming a lien;
 - (E) A lease that demises a fee time share interest or interest in other deregistered land;

- (F) An order of court, attachment, writ, or other process against a fee time share interest or interest in other deregistered land;
 - (G) A mechanic's or materialman's lien or other lien upon a fee time share interest or interest in other deregistered land;
 - (H) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a fee time share interest or interest in other deregistered land and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to ~~[a power of sale under section 667-5,]~~ chapter 667 or otherwise; or
 - (I) A power of attorney given by the owner of a fee time share interest or interest in other deregistered land or the vendor or vendee under an agreement of sale for the sale of a fee time share interest or interest in other deregistered land, a mortgagee or other lienor having a mortgage or lien upon a fee time share interest or interest in other deregistered land, or another party holding a claim or encumbrance against or an interest in a fee time share interest or interest in other deregistered land;
- (2) A lis pendens or notice of pendency of action, notice, affidavit, demand, certificate, execution, copy of execution, officer's return, or other instrument relating to a fee time share interest or interest in other deregistered land and otherwise required or permitted to be recorded or registered in connection with the enforcement or foreclosure of any lien, whether by way of power of sale pursuant to ~~[a power of sale under section 667-5,]~~ chapter 667 or otherwise; and
- (3) Any declaration annexing property to, any declaration deannexing property from, any amendment or supplement to, correction of, or release or termination of, any of the following documents, instruments, or papers that have been registered pursuant to this chapter and that pertain to deregistered land:
- (A) A declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, establishing or governing a time share plan, or the bylaws of a time share owners association, notice of time share plan, or other time share instrument;
 - (B) A declaration of condominium property regime or similar declaration by whatever name denominated, the bylaws of the association of apartment owners, the condominium map, any declaration of merger and any instrument effecting a merger; provided that if only some of the condominium apartments are included in the time share plan, then it shall be necessary to register, and to note on the certificate of title for any apartment not included in the time share plan:
 - (i) Any declaration annexing property to the condominium property regime;
 - (ii) Any declaration deannexing property from the condominium property regime;
 - (iii) Any instrument effecting a merger of two or more condominium projects or two or more phases of a condominium project; and
 - (iv) Any document, instrument, or paper amending, supplementing, correcting, releasing, or terminating any of the

- documents listed in subparagraph (B)(i) through (iii), the declaration of condominium property regime, the bylaws of the association of apartment owners, the condominium map, or any declaration of merger; and
- (C) A declaration of covenants, conditions, restrictions, or similar instrument, by whatever name denominated, the bylaws of any homeowners association, any declaration of annexation or deannexation, any amendments and supplements thereto, and any cancellation or extinguishment thereof, any declaration of merger and any instrument effecting a merger; provided that if only some of the parcels of land covered by the declaration constitutes deregistered land, and if one or more of the remaining parcels constitute registered land, then it shall be necessary to register, and to note on the certificate of title for any registered land:
- (i) Any declaration annexing property to the declaration;
 - (ii) Any declaration deannexing property from the operation of the declaration; and
 - (iii) Any document, instrument, or paper amending, supplementing, correcting, releasing, or terminating any of the documents listed in subparagraph (C)(i) or (ii), the declaration of covenants, conditions, restrictions, or the bylaws of the homeowners association."

SECTION 9. Section 514A-90, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except:

 - (1) Liens for taxes and assessments lawfully imposed by governmental authority against the apartment; and
 - (2) All sums unpaid on any mortgage of record that was recorded prior to the recordation of notice of a lien by the association of apartment owners, and costs and expenses including attorneys' fees provided in such mortgages[-];

provided that a lien recorded by an association of apartment owners for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided further that the expiration of a recorded lien shall in no way affect the association of apartment owners' automatic lien that arises pursuant to this subsection or the declaration or bylaws. Any proceedings to enforce an association of apartment owners' lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of an apartment subject to a lien of the association of apartment owners files a petition for relief under the United States Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for instituting proceedings to enforce the association of apartment owners' lien shall be tolled until thirty days after the automatic stay of proceedings under section 362 of the United States Bankruptcy Code (11 U.S.C. §362) is lifted.

The lien of the association of apartment owners may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board of directors, acting on behalf of the association of apartment owners[~~, in like manner as a mortgage of real property.~~] and in the name of the association of apartment owners; provided that no

association of apartment owners may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any apartment that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part 1A of chapter 667.

In any such foreclosure, the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws[;] or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed[;] by the apartment owner or any tenant of the apartment. If the association of apartment owners is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rent from the tenant. The managing agent or board of directors, acting on behalf of the association of apartment owners[;] and in the name of the association of apartment owners, unless prohibited by the declaration, may bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the apartment. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) Except as provided in subsection (g), when the mortgagee of a mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to the apartment ~~[which]~~ that became due prior to the acquisition of title to the apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the apartment shall be deemed to acquire title and shall be required to pay the apartment's share of common expenses and assessments beginning:

- (1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;
- (2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;
- (3) Thirty days after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to ~~[section 667-5;]~~ chapter 667; or
- (4) Upon the recording of the instrument of conveyance,

whichever occurs first; provided that the mortgagee of record or other purchaser of the apartment shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the apartment shall be deemed to acquire title upon recordation of the instrument of conveyance."

2. By amending subsections (h) and (i) to read:

"(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the ~~[twelve]~~ six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure. ~~In no event shall the amount of the special assessment exceed the sum of \$7,200.]~~

(i) For purposes of subsections (g) and (h), the following definitions shall apply:

“Completion” means:

- (1) In a nonjudicial power of sale foreclosure, when the affidavit [required under section 667-5 is filed;] after public sale is recorded pursuant to section 667-33; and
- (2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

“Regular monthly common assessments” shall not include:

- (1) Any other special assessment, except for a special assessment imposed on all apartments as part of a budget adopted pursuant to section 514A-83.6;
- (2) Late charges, fines, or penalties;
- (3) Interest assessed by the association of apartment owners;
- (4) Any lien arising out of the assessment; or
- (5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys’ fees and court costs.”

SECTION 10. Section 514B-146, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) All sums assessed by the association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on the unit with priority over all other liens, except:

- (1) Liens for taxes and assessments lawfully imposed by governmental authority against the unit; and
- (2) All sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the association, and costs and expenses including attorneys’ fees provided in such mortgages[-];

provided that a lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided further that the expiration of a recorded lien shall in no way affect the association’s automatic lien that arises pursuant to this subsection or the declaration or bylaws. Any proceedings to enforce an association’s lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of a unit subject to a lien of the association files a petition for relief under the United States Bankruptcy Code (11 U.S.C. §101 et seq.), the period of time for instituting proceedings to enforce the association’s lien shall be tolled until thirty days after the automatic stay of proceedings under section 362 of the United States Bankruptcy Code (11 U.S.C. §362) is lifted.

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association[~~in like manner as a mortgage of real property.~~] and in the name of the association; provided that no association may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part 1A of chapter 667.

In any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws[-] or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed[-] by the unit owner or any tenant of the unit. If the association is

the plaintiff, it may request that its managing agent be appointed as receiver to collect the rent from the tenant. The managing agent or board, acting on behalf of the association[;] and in the name of the association, unless prohibited by the declaration, may bid on the unit at foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) Except as provided in subsection (g), when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the association chargeable to the unit ~~[which]~~ that became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses and assessments beginning:

- (1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;
- (2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;
- (3) Thirty days after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to ~~[section 667-5;]~~ chapter 667; or
- (4) Upon the recording of the instrument of conveyance;

whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance."

2. By amending subsections (h) and (i) to read:

"(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the ~~[twelve]~~ six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure. ~~[In no event shall the amount of the special assessment exceed the sum of \$7,200.]~~

(i) For purposes of subsections (g) and (h), the following definitions shall apply, unless the context requires otherwise:

"Completion" means:

- (1) In a nonjudicial power of sale foreclosure, when the affidavit ~~[required under section 667-5 is filed;]~~ after public sale is recorded pursuant to section 667-33; and
- (2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

"Regular monthly common assessments" does not include:

- (1) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514B-148;

- (2) Late charges, fines, or penalties;
- (3) Interest assessed by the association;
- (4) Any lien arising out of the assessment; or
- (5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs."

SECTION 11. Section 607-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The fees prescribed by the schedule in this section shall be paid to the clerk of the circuit court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the circuit court; provided that nothing in the schedule shall apply to cases of adults charged with commission of a crime, or to proceedings under section 571-11(1), (2), or (9), to proceedings under chapter 333F or 334, to small estates including decedents' estates and protection of property of minors and persons under disability when the amount payable is fixed by another statute~~[-, or to nonjudicial foreclosures converted to judicial proceedings pursuant to section 667-53; and]~~; provided further that the fees prescribed by subsection (c)(32) shall be deposited by the clerk of the circuit court into the judiciary computer system special fund pursuant to section 601-3.7~~[-]; provided further that the fees prescribed by subsection (b)(1a) shall be deposited by the clerk of the circuit court as provided in section 667-53(a)(6).~~

For the purpose of this section, "judgment" includes a decree and any order from which an appeal lies.

SCHEDULE

In the application of this schedule, each case assigned a new number or filed under the number previously assigned to a probate, trust, guardianship, or conservatorship, shall carry a fee for the institution or transfer of the action or proceeding as prescribed by part I, and in addition the fees prescribed by part II unless otherwise provided.

(b) PART I

Action or proceeding, general:

- (1) Civil action or special proceeding, unless another item in part I applies..... \$200
- (1a) Petition for conversion of nonjudicial foreclosure to judicial foreclosure..... \$250
- (2) Appeal to a circuit court..... \$100
- (3) Transfer of action to circuit court from district court, in addition to district court fees..... \$125

Trusts:

- (4) Proceeding for (A) appointment of trustee; (B) appointment of successor; (C) resignation of trustee; (D) instructions; (E) approval of investment; (F) approval of sale, mortgage, lease, or other disposition of property; (G) approval of compromise of claim, for each such matter..... \$100
- (5) Proceeding for (A) removal of trustee; (B) order requiring accounting; (C) invalidation of action taken by trustee; (D) termination of trust, for each such matter..... \$100
- (6) Accounting, this fee to be paid for each account filed and to include the settlement of the account..... \$10
- (7) Vesting order no charge under part I

(8)	Allowance of fees of trustees, attorneys, or other fees for services incurred in a proceeding for which a fee has been paid under this section.....	no charge under part I
(8a)	Registration of a trust, or release of registration, under chapter 560	\$3
(9)	Any other proceeding relating to a trust	\$15
Conservatorship:		
(10)	Proceeding for (A) appointment; (B) appointment of successor; (C) resignation; (D) instructions, unless included in one of the foregoing proceedings; (E), (F), (G) approval of any matter listed in (E), (F), or (G) of item (4) in relation to a trust, for each such matter.....	\$100
(11)	Proceeding of the nature listed in (A), (B), (C), or (D) of item (5) in relation to a trust, for each such matter	\$15
(12)	Accounting, same as provided by item (6) in relation to a trust	\$10
(13)	Any other proceeding relating to a conservatorship.....	no charge under part I
Guardianship:		
(13a)	Guardianship, including all matters of the nature listed in items (4) to (9), whether in family or circuit court	\$100
Probate (decedents' estates). These fees include all matters of the nature listed in items (4) to (9), without additional charge:		
(14)	Probate, administration, domiciliary foreign personal representative, or ancillary administration, this fee to be paid once only for each decedent's estate.....	\$100
Family court cases:		
(15)	Matrimonial action (annulment, divorce, separation, or separate maintenance)	\$100
(16)	Adoption	\$100
(17)	Guardianship, including all matters of the nature listed in items (4) to (9)	As provided in item 13(a)
(18)	Termination of parental rights.....	no charge under part I
(19)	Any other family court proceeding, except motions or other pleadings in matrimonial, adoption, and guardianship actions, but including without limitation custody proceedings even if in the form of an habeas corpus proceeding	\$15"

SECTION 12. Section 667-3, Hawaii Revised Statutes, is amended to read as follows:

"§667-3 Proceeds, how applied. Mortgage and other creditors shall be entitled to payment according to the priority of their liens, and not pro rata; and judgments of foreclosure [~~and foreclosures by power of sale~~] that are conducted in compliance with this part [~~and for which an affidavit is recorded as required under section 667-5~~] shall operate to extinguish the liens of subsequent mortgages and liens of the same property, without forcing prior mortgagees or lienors to their right of recovery. The surplus after payment of the mortgage foreclosed,

shall be applied pro tanto to the next junior mortgage or lien, and so on to the payment, wholly or in part, of mortgages and liens junior to the one assessed.”

SECTION 13. Section 667-5.5, Hawaii Revised Statutes, is amended to read as follows:

“§667-5.5 Foreclosure notice; planned communities; condominiums; cooperative housing projects. Notwithstanding any law or agreement to the contrary, any person who forecloses on a property under this part within a planned community, a condominium apartment or unit, or an apartment in a cooperative housing project shall notify, by registered or certified mail, the board of directors of the planned community association, the association of owners of the condominium project, or the cooperative housing project in which the property to be foreclosed is located, of the following:

- (1) The foreclosure at the time foreclosure proceedings are begun[-]; and
- (2) Any election by an owner-occupant of the property that is the subject of the foreclosure to participate in the mortgage foreclosure dispute resolution program under part V.

The notice, at a minimum, shall identify the property, condominium apartment or unit, or cooperative apartment that is the subject of the foreclosure and identify the name or names of the person or persons bringing foreclosure proceedings. [This section] Paragraph (1) shall not apply if the planned community association, condominium association of owners, or cooperative housing corporation is a party in a foreclosure action. This section shall not affect civil proceedings against parties other than the planned community association, association of owners, or cooperative housing corporation.”

SECTION 14. Section 667-10, Hawaii Revised Statutes, is amended to read as follows:

“§667-10 Power unaffected by transfer; surplus after sale. No sale or transfer by the mortgagor shall impair or annul any right or power of attorney given in the mortgage to the mortgagee to sell or transfer the mortgaged property, as attorney or agent of the mortgagor, except as otherwise provided by chapters 501 and 502. When public sale is made of the mortgaged property under this part, distribution of the proceeds of the sale shall be as specified in section 667-3, and the remainder of the proceeds, if any, shall be paid over to the owner of the mortgaged property, after deducting the amount of [elaim] all claims and all expenses attending the same.”

SECTION 15. Section 667-21, Hawaii Revised Statutes, is amended to read as follows:

“§667-21 [Alternate power] Power of sale process[-; definitions. (a)]. The power of sale process in this part is an alternative [power of sale process] to the foreclosure by action [and the foreclosure by power of sale] in part [I-] IA.

[(b) As used in this part:

“Approved budget and credit counselor” means a budget and credit counseling agency that has received approval from a United States trustee or bankruptcy administrator to provide instructional courses concerning personal financial management pursuant to Title 11 United States Code, section 111.

“Approved housing counselor” means a housing counseling agency that has received approval from the United States Department of Housing and Ur-

ban Development to provide housing counseling services pursuant to section 106(a)(2) of the Housing and Urban Development Act of 1968, Title 12 United States Code, section 1701x.

"Association" has the same meaning as the term is defined in section 514B-3.

"Borrower" means the borrower, maker, cosigner, or guarantor under a mortgage agreement.

"Foreclosing mortgagee" means the mortgagee that intends to conduct a power of sale foreclosure; provided that the mortgagee is a federally insured bank, a federally insured savings and loan association, a federally insured savings bank, a depository financial services loan company, a nondepository financial services loan company, a credit union insured by the National Credit Union Administration, a bank holding company, a foreign lender as defined in section 207-11, or an institutional investor as defined in section 454-1.

Unless the context clearly indicates otherwise, as used in this part, a "foreclosing mortgagee" shall encompass all of the following entities:

- (1) The foreclosing mortgagee;
- (2) Any person that has an ownership interest in the promissory note on the mortgage agreement or a security interest represented by the mortgage for the subject property;
- (3) Any mortgage servicer, who services the mortgage loan of the mortgagor; and
- (4) The agents, employees, trustees, and representatives of a lender, the foreclosing mortgagee, a mortgagee, and a mortgage servicer.

"Mailed" means to be sent by regular mail, postage prepaid, and by certified, registered, or express mail, postage prepaid and return receipt requested.

"Mortgage" means a mortgage, security agreement, or other document under which property is mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

"Mortgage agreement" includes the mortgage, the note or debt document, or any document amending any of the foregoing.

"Mortgaged property" means the property that is subject to the lien of the mortgage.

"Mortgagee" means the current holder of record of the mortgagee's or the lender's interest under the mortgage, or the current mortgagee's or lender's duly authorized agent.

"Mortgagor" means the mortgagor or borrower named in the mortgage and, unless the context otherwise indicates, includes the current owner of record of the mortgaged property whose interest is subject to the mortgage.

"Nonjudicial foreclosure" means foreclosure under power of sale.

"Open house" means a public showing of the mortgaged property during a scheduled time period.

"Owner-occupant" means a person, at the time that a notice of default and intention to foreclose is served on the mortgagor under the power of sale:

- (1) Who owns an interest in the residential property, and the interest is encumbered by the mortgage being foreclosed; and
- (2) For whom the residential property is and has been the person's primary residence for a continuous period of not less than two hundred days immediately preceding the date on which the notice is served.

"Power of sale" or "power of sale foreclosure" means a nonjudicial foreclosure under this part when the mortgage contains, authorizes, permits, or provides for a power of sale, a power of sale foreclosure, a power of sale remedy, or a nonjudicial foreclosure.

"Property" means property (real, personal, or mixed), an interest in property (including fee simple, leasehold, life estate, reversionary interest, and any other estate under applicable law), or other interests that can be subject to the lien of a mortgage.

"Record" or "recorded" means a document is recorded or filed with the office of the assistant registrar of the land court under chapter 501 or recorded with the registrar of conveyances under chapter 502, or both, as applicable.

"Residential property" means real property that is improved and used for residential purposes.

"Served" means to have service of the notice of default and intention to foreclose made in accordance with the service of process or the service of summons under the Hawaii rules of civil procedure, and under sections 634-35 and 634-36.]"

SECTION 16. Section 667-21.5, Hawaii Revised Statutes, is amended to read as follows:

"[§667-21.5] Foreclosure notice; planned communities; condominiums; cooperative housing projects. Notwithstanding any law or agreement to the contrary, any person who forecloses on a property under this part within a planned community, a condominium apartment or unit, or an apartment in a cooperative housing project shall notify, by way of registered or certified mail, the board of directors of the planned community association, the association of owners of the condominium project, or the cooperative housing project in which the property to be foreclosed is located, of the following:

- (1) The foreclosure at the time foreclosure proceedings are begun[-]; and
- (2) Any election by an owner-occupant of the property that is the subject of the foreclosure to participate in the mortgage foreclosure dispute resolution program under part V.

The notice, at a minimum, shall identify the property, condominium apartment or unit, or cooperative apartment that is the subject of the foreclosure and identify the name or names of the person or persons bringing foreclosure proceedings. ~~[This section]~~ Paragraph (1) shall not apply when the planned community association, condominium association of owners, or cooperative housing corporation is a party in a foreclosure action. This section shall not affect civil proceedings against parties other than the planned community association, association of owners, or cooperative housing corporation."

SECTION 17. Section 667-22, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) When the mortgagor or the borrower has breached the mortgage agreement, and when the foreclosing mortgagee intends to conduct a power of sale foreclosure under this part, the foreclosing mortgagee shall prepare a written notice of default and intention to foreclose addressed to the mortgagor, the borrower, and any guarantor. The notice of default and intention to foreclose shall state:

- (1) The name and address of the current mortgagee;
- (2) The name and last known address of ~~[all]~~ the mortgagors, the borrowers, and any guarantors;
- (3) ~~[The]~~ With respect to the mortgaged property, the address or a description of ~~[the]~~ its location ~~[of the mortgaged property, the]~~, tax map key number, and ~~[the]~~ certificate of title or transfer certificate

of title number if ~~[within the jurisdiction of]~~ registered in the land court~~[, of the mortgaged property];~~

- (4) The description of the default or, if the default is a monetary default, an itemization of the delinquent amount;
- (5) The action required to cure the default, including the delinquent amount and the estimated amount of the foreclosing mortgagee's attorney's fees and costs, and all other fees and costs related to the default estimated to be incurred by the foreclosing mortgagee by the deadline date;
- (6) The date by which the default must be cured, which shall be at least sixty days after the date of the notice of default and intention to foreclose;
- (7) A statement that if the default is not cured by the deadline date stated in the notice of default and intention to foreclose, the entire unpaid balance of the moneys owed to the mortgagee under the mortgage agreement will become due, that the mortgagee intends to conduct a power of sale foreclosure to sell the mortgaged property at a public sale without any court action and without going to court, and that the mortgagee or any other person may acquire the mortgaged property at the public sale;
- (8) A statement that if the default is not cured by the deadline date stated in the notice of default and intention to foreclose, the mortgagee may publish the public notice of the public sale in a newspaper of general circulation or on a state website, pursuant to section 667-27(d);
- ~~[(8)]~~ (9) The name, address, electronic address, and telephone number of the attorney who is representing the foreclosing mortgagee; provided that the attorney shall be licensed to practice law in the State and physically located in the State; and
- ~~[(9)]~~ (10) Notice of the right of the owner-occupant to elect to participate in any other process as established by law.

(b) The notice of default and intention to foreclose shall also contain wording substantially similar to the following in all capital letters and printed in not less than fourteen-point font:

"IF THE DEFAULT ON THE LOAN CONTINUES AFTER THE DEADLINE DATE IN THIS NOTICE, THE MORTGAGED PROPERTY MAY BE FORECLOSED AND SOLD WITHOUT ANY COURT ACTION AND WITHOUT GOING TO COURT.

YOU MAY HAVE CERTAIN LEGAL RIGHTS OR DEFENSES. FOR ADVICE, YOU SHOULD CONSULT WITH AN ATTORNEY LICENSED IN THIS STATE.

~~[AFTER THE DEADLINE DATE IN THIS NOTICE, TWO PUBLIC SHOWINGS (OPEN HOUSES) OF THE PROPERTY BY THE LENDER WILL BE HELD, BUT ONLY IF ALL MORTGAGORS (OWNERS) OF THE PROPERTY WHO ALSO CURRENTLY RESIDE AT THE PROPERTY SO AGREE. TO SHOW THAT ALL OWNERS RESIDING AT THE PROPERTY AGREE TO ALLOW TWO OPEN HOUSES BY THE LENDER, THEY MUST SIGN A LETTER SHOWING THEY AGREE. THE SIGNED LETTER MUST BE SENT TO THIS OFFICE AT THE ADDRESS GIVEN IN THIS NOTICE.~~

~~THIS OFFICE MUST ACTUALLY RECEIVE THE SIGNED LETTER BY THE DEADLINE DATE IN THIS NOTICE. THE SIGNED LETTER MUST BE SENT TO THIS~~

~~OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT REQUESTED.~~

~~IF THE SIGNED LETTER IS NOT RECEIVED BY THIS OFFICE BY THE DEADLINE DATE, THE PROPERTY WILL THEN BE SOLD WITHOUT ANY OPEN HOUSES BEING HELD.~~

~~EVEN IF THIS OFFICE RECEIVES THE SIGNED LETTER TO ALLOW THE LENDER TO HOLD TWO OPEN HOUSES OF THE PROPERTY, IF ALL OWNERS LATER DO NOT COOPERATE TO ALLOW THE OPEN HOUSES, THE PROPERTY WILL BE SOLD WITHOUT ANY OPEN HOUSES BEING HELD.]~~

ALL FUTURE NOTICES AND CORRESPONDENCE WILL BE MAILED TO YOU AT THE ADDRESS AT WHICH YOU RECEIVED THIS NOTICE UNLESS YOU SEND WRITTEN INSTRUCTIONS TO THIS OFFICE INFORMING THIS OFFICE OF A DIFFERENT ADDRESS. THE WRITTEN INSTRUCTIONS MUST BE SENT TO THIS OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE PREPAID AND RETURN RECEIPT REQUESTED."

2. By amending subsections (d) and (e) to read:

"(d) The notice of default and intention to foreclose shall also include contact information for [local] approved housing counselors and approved budget and credit counselors.

(e) The foreclosing mortgagee shall have the notice of default and intention to foreclose served on:

- (1) The mortgagor and the borrower [~~in the same manner as service of a civil complaint under chapter 634 or the Hawaii rules of civil procedure, as they may be amended from time to time~~];
- (2) Any prior or junior creditors who have a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23;
- (3) The state director of taxation;
- (4) The director of finance of the county where the mortgaged property is located;
- (5) The department of commerce and consumer affairs, by filing the notice with the department when required; and
- (6) Any other person entitled to receive notice under this part."

SECTION 18. Section 667-24, Hawaii Revised Statutes, is amended to read as follows:

"§667-24 Cure of default. (a) If the default is cured as required by the notice of default and intention to foreclose, or if the parties have reached ~~[a settlement document,]~~ an agreement to resolve the nonjudicial foreclosure, the foreclosing mortgagee shall rescind the notice of default and intention to foreclose. Within fourteen days of the date of the cure or ~~[a settlement document reached by the parties,]~~ an agreement to resolve the nonjudicial foreclosure, the foreclosing mortgagee shall so notify any person who was served with the notice of default and intention to foreclose. If the notice of default and intention to foreclose was recorded, a release of the notice of default and intention to foreclose shall be recorded.

(b) If the default is not cured as required by the notice of default and intention to foreclose, the parties have not reached ~~[a settlement document pursuant to part V]~~ an agreement to resolve the nonjudicial foreclosure and no report of noncompliance has been issued against the mortgagee under section 667-82, and the mortgagor has not elected to convert the foreclosure to a judicial action, the foreclosing mortgagee, without filing a court action and without going to court, may foreclose the mortgage under power of sale to sell the mortgaged property at a public sale."

SECTION 19. Section 667-25, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The public sale of the mortgaged property shall be held only in the county where the mortgaged property is located; provided that the public sale shall be held only on grounds or at facilities under the administration of the State, as follows:

- (1) At the state capitol, for a public sale of mortgaged property located in the city and county of Honolulu;
- (2) At a state facility in Hilo, for a public sale of mortgaged property located in the ~~[eastern portion of the county of Hawaii;]~~ districts of Hamakua, north Hilo, south Hilo, or Puna;
- (3) At a state facility in Kailua-Kona, for a public sale of mortgaged property located in the ~~[western portion of the county of Hawaii;]~~ districts of north Kohala, south Kohala, north Kona, south Kona, or Kau;
- (4) At a state facility in the county seat of Maui, for a public sale of mortgaged property located in the county of Maui; and
- (5) At a state facility in the county seat of Kauai, for a public sale of mortgaged property located in the county of Kauai;

as designated by the department of accounting and general services; provided further that no public sale shall be held on grounds or at facilities under the administration of the judiciary. The public sale shall be held during business hours on a business day."

SECTION 20. Section 667-27, Hawaii Revised Statutes, is amended to read as follows:

"§667-27 Public notice of public sale; contents; distribution; publication.

(a) The foreclosing mortgagee shall prepare the public notice of the public sale. The public notice shall state:

- (1) The date, time, and place of the public sale;
- ~~[(2) The dates and times of the two open houses of the mortgaged property, or if there will not be any open houses, the public notice shall so state;~~
- ~~[(3)]~~ (2) The unpaid balance of the moneys owed to the mortgagee under the mortgage agreement;
- ~~[(4)]~~ (3) A description of the mortgaged property, including the address and the tax map key number of the mortgaged property;
- ~~[(5)]~~ (4) The name of the mortgagor and the borrower;
- ~~[(6)]~~ (5) The name of the foreclosing mortgagee;
- ~~[(7)]~~ (6) The name of any prior or junior creditors having a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23;
- ~~[(8)]~~ (7) The name, the address in the State, and the telephone number in the State of the person in the State conducting the public sale; and

[~~(9)~~] (8) The terms and conditions of the public sale~~[-and~~

~~(10) An estimate of the opening bid].~~

(b) The public notice shall also contain wording substantially similar to the following in all capital letters:

“THE DEFAULT UNDER THE MORTGAGE AGREEMENT MAY BE CURED NO LATER THAN THREE BUSINESS DAYS BEFORE THE DATE OF THE PUBLIC SALE OF THE MORTGAGED PROPERTY BY PAYING THE ENTIRE AMOUNT WHICH WOULD BE OWED TO THE FORECLOSING MORTGAGEE IF THE PAYMENTS UNDER THE MORTGAGE AGREEMENT HAD NOT BEEN ACCELERATED, PLUS THE FORECLOSING MORTGAGEE’S ATTORNEY’S FEES AND COSTS, AND ALL OTHER FEES AND COSTS INCURRED BY THE FORECLOSING MORTGAGEE RELATED TO THE DEFAULT, UNLESS OTHERWISE AGREED TO BETWEEN THE FORECLOSING MORTGAGEE AND THE BORROWER. THERE IS NO RIGHT TO CURE THE DEFAULT OR ANY RIGHT OF REDEMPTION AFTER THAT TIME. IF THE DEFAULT IS SO CURED, THE PUBLIC SALE SHALL BE CANCELED.”

(c) If the default is not cured as required by the notice of default and intention to foreclose, the foreclosing mortgagee shall have a copy of the public notice of the public sale of the mortgaged property:

- (1) Mailed or delivered to the mortgagor and the borrower at their respective last known addresses;
- (2) Mailed or delivered to any prior or junior creditors having a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23;
- (3) Mailed or delivered to the state director of taxation;
- (4) Mailed or delivered to the director of finance of the county where the mortgaged property is located;
- (5) Posted on the mortgaged property or on such other real property of which the mortgaged property is a part; and
- (6) Mailed or delivered to any other person entitled to receive notice under section 667-5.5 or 667-21.5.

(d) The foreclosing mortgagee shall have the public notice of the public sale ~~[printed]~~:

- (1) Printed in not less than seven-point font and published in the classified section of a ~~[daily]~~ newspaper ~~[having the largest]~~ of general circulation ~~[specifically]~~ in the ~~[county where the mortgaged property is located; provided that for property located in a county with a population of more than one hundred thousand but less than three hundred thousand, the public notice shall be published in the newspaper having the largest general circulation specifically in the western or eastern half of the county, as the case may be, in which the property is located.]~~ geographic area in which the mortgaged property is located. A person may apply to the circuit court for an order confirming a newspaper to be of general circulation for purposes of this paragraph, which the court shall grant upon proof of compliance with this paragraph. The public notice shall be published once each week for three consecutive weeks, constituting three publications. The public sale shall take place no sooner than fourteen days

- after the date of the publication of the third public notice advertisement[-]; or
- (2) Not less than twenty-eight days before the date of the public sale, published on a state website at the discretion of the agency that maintains the website; provided that:
 - (A) If the mortgaged property is owned by an owner-occupant, the public notice shall be published on a website maintained by the department. The department shall publish the public notice pursuant to this subparagraph upon satisfaction of the filing requirements of section 667-76(b); and
 - (B) The public notice shall be published at least once in the format described in paragraph (1) at least fourteen days prior to the public sale.
- (e) As used in subsection (d):
"General circulation" refers to a newspaper that:
- (1) Contains news of a general nature; and
 - (2) Is distributed within the geographic area where the mortgaged property is located:
 - (A) At least weekly;
 - (B) For a minimum of one year unless interrupted by strike, natural disaster, or act of war or terror; and
 - (C) To a minimum of three per cent of the residents of the geographic area, as determined by the last decennial United States census and as verified by an independent audit.
- "Geographic area" means:
- (1) The real property tax zone of the mortgaged property, as shown on the real property tax maps kept by the real property tax assessment division of the county of Hawaii, if the mortgaged property is located in the county of Hawaii; or
 - (3) The county in which the mortgaged property is located, if the mortgaged property is located in the city and county of Honolulu or the county of Maui or Kauai."

SECTION 21. Section 667-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The public sale may be either postponed or canceled by the foreclosing mortgagee. Notice of the postponement or the cancellation of the public sale shall be ~~announced~~:

- (1) Announced by the foreclosing mortgagee at the date, time, and place of the last scheduled public sale[-]; and
- (2) Provided to any other person who is entitled to receive the notice of default under section 667-22."

SECTION 22. Section 667-32, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The recitals in the affidavit required under subsection (a) may, but need not, be substantially in the following form:

- "(1) I am duly authorized to represent or act on behalf of _____ (name of mortgagee) ("foreclosing mortgagee") regarding the following power of sale foreclosure. I am signing this affidavit in accordance with the ~~[alternate]~~ power of sale foreclosure ~~[law]~~ process (Chapter 667, Part II, Hawaii Revised Statutes);

- (2) The foreclosing mortgagee is a [~~"foreclosing mortgagee"~~] mortgagee as defined in [~~the power of sale foreclosure law;~~] section 667-1, Hawaii Revised Statutes, conducting a power of sale foreclosure;
- (3) The power of sale foreclosure is of a mortgage made by _____ (name of mortgagor) ("mortgagor"), dated _____, and recorded in the _____ (bureau of conveyances or office of the assistant registrar of the land court) as _____ (recordation information). The mortgaged property is located at: _____ (address or description of location) and is identified by tax map key number: _____. The legal description of the mortgaged property, including the certificate of title or transfer certificate of title number if registered in the land court, is attached as Exhibit "A". The name of the borrower, if different from the mortgagor, is _____ ("borrower");
- (4) Pursuant to the power of sale provision of the mortgage, the power of sale foreclosure was conducted as required by the power of sale foreclosure law. The following is a summary of what was done:
 - (A) A notice of default and intention to foreclose was served on the mortgagor, the borrower, and the following person: _____. The notice of default and intention to foreclose was served on the following date and in the following manner: _____;
 - (B) The date of the notice of default and intention to foreclose was _____ (date). The deadline in the notice for curing the default was _____ (date), which deadline date was at least sixty days after the date of the notice;
 - (C) The notice of default and intention to foreclose was recorded before the deadline date in the _____ (bureau of conveyances or office of the assistant registrar of the land court). The notice was recorded on _____ (date) as document no. _____. A copy of the recorded notice is attached as Exhibit "1";
 - (D) The default was not cured by the deadline date in the notice of default and intention to foreclose;
 - (E) A public notice of the public sale was initially published in the classified section of the _____, [~~a daily newspaper of general circulation in the county where the mortgaged property is located;~~] in accordance with section 667-27(d), Hawaii Revised Statutes, once each week for three consecutive weeks on the following dates: _____. A copy of the affidavit of publication for the last public notice of the public sale is attached as Exhibit "2". The date of the public sale was _____ (date). The last publication was not less than fourteen days before the date of the public sale;
 - (F) The public notice of the public sale was sent to the mortgagor, to the borrower, to the state director of taxation, to the director of finance of the county where the mortgaged property is located, and to the following: _____. The public notice was sent on the following dates and in the following manner: _____. Those dates were after the deadline date in the notice of default and intention to fore-

- close, and those dates were at least sixty days before the date of the public sale;
- (G) The public notice of the public sale was posted on the mortgaged property or on such other real property of which the mortgaged property is a part on _____ (date). That date was at least sixty days before the date of the public sale;
- ~~[(H) Two public showings (open houses) of the mortgaged property were held (or were not held because the mortgagor did not cooperate);~~
- ~~[(H)]~~ (H) A public sale of the mortgaged property was held on a business day during business hours on: _____ (date), at _____ (time), at the following location: _____. The highest successful bidder was _____ (name) with the highest successful bid price of \$ _____; and
- ~~[(I)]~~ (I) At the time the public sale was held, the default was not cured and there was no circuit court foreclosure action pending in the circuit where the mortgaged property is located; and
- (5) This affidavit is signed under penalty of perjury.””

SECTION 23. Section 667-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The affidavit required under section 667-32 and the conveyance document shall be recorded ~~[at any time]~~ no earlier than ten days after the public sale is held but not later than forty-five days after the public sale is held. The affidavit and the conveyance document may be recorded separately and on different days. After the recordation, the foreclosing mortgagee shall mail or deliver a recorded copy to those persons entitled to receive the public notice of the public sale under section 667-27(c).”

SECTION 24. Section 667-37, Hawaii Revised Statutes, is amended to read as follows:

“§667-37 Judicial action of foreclosure before public sale. This part shall not prohibit ~~[the borrower,]~~ the foreclosing mortgagee, or any other creditor having a recorded lien on the mortgaged property before the recordation of the notice of default under section 667-23, from filing an action for the judicial foreclosure of the mortgaged property in the circuit court of the circuit where the mortgaged property is located~~[-];~~ provided that the action is filed before the public sale is held. The power of sale foreclosure process shall be stayed during the pendency of the circuit court foreclosure action.”

SECTION 25. Section 667-38, Hawaii Revised Statutes, is amended to read as follows:

~~“[§667-38]—Recordation; full satisfaction of debt by borrower. Deficiency judgment against owner-occupant prohibited.~~ [The recordation of both the conveyance document and the affidavit shall operate as full satisfaction of the debt owed by the borrower to the foreclosing mortgagee even if the foreclosing mortgagee receives nothing from the sale proceeds, unless the debt is secured by other collateral, or except as otherwise provided by law.] Upon completion of the nonjudicial foreclosure of residential property pursuant to this part, the mortgagee or other person, excluding an association, shall not be entitled to pur-

sue or obtain a deficiency judgment against an owner-occupant unless the debt is secured by other collateral. The debts of other lien creditors are unaffected except as provided in this part."

SECTION 26. Section 667-41, Hawaii Revised Statutes, is amended to read as follows:

"§667-41 Public information notice requirement. [Beginning on September 1, 2011, all] (a) All financial institutions, mortgagees, lenders, business entities and organizations without limitation, and persons, who intend to use the power of sale foreclosure under this part, under the conditions required by this part, shall [also develop informational materials to educate and inform borrowers and mortgagors. These materials shall be made available to the public and provided to the mortgagors of all mortgage agreements entered into, including the borrowers at the time of application for a mortgage or loan, or other contract containing a power of sale foreclosure provision. These materials, among other things, shall inform the borrower that the financial institution and other business entities and persons who are authorized under this part to exercise the power of sale foreclosure, in the event of the borrower's default, have the option of pursuing either a judicial or nonjudicial foreclosure as provided by law. These informational materials shall fully and completely explain these remedies in simple and understandable terms.] provide the public information notice described in subsection (b) to the public, upon request, and to any applicant submitting a loan application where residential property is required to be used to secure the loan. The notice shall be provided to all applicants and all owners of the residential property (if different from the applicants) within three business days after the submission of a written loan application, or within three business days after the time residential property is required to be used to secure a loan, whether or not there is a written loan application. The purpose of the public information notice is to inform the public, applicants, and others that the financial institutions, mortgagees, lenders, organizations, and other business entities and persons who are authorized under this part to enforce the foreclosure rights in a mortgage, in the event of the borrower's default, have the option of pursuing either a judicial or nonjudicial foreclosure in the manner provided by law.

(b) The public information notice requirement shall be satisfied by the delivery of a separate notice that contains the following wording and is printed in not less than fourteen-point font:

**PUBLIC INFORMATION NOTICE PURSUANT TO
HAWAII REVISED STATUTES SECTION 667-41
WHAT IS FORECLOSURE?**

This notice informs you regarding a lender's right to foreclose in the event of a default on the loan you have applied for or are considering if your home is used to secure its repayment.

The mortgage agreement or contract that you may enter into states that in the event the amounts due under the loan are not paid when they are due, or for other reasons you do not perform your promises in the note and mortgage, all of which are known as defaults, the lender shall have the option to foreclose the mortgage, which will result in a sale of your home.

The entity or person who holds your mortgage ("Mortgagee") may send you a notice informing you that the Mortgagee is starting foreclosure proceedings. You should not wait for that to happen; take steps to prevent a foreclosure as soon as you are having trouble paying

your mortgage. You should contact your lender or your lender's loan servicer, or you may contact a budget and credit counselor or housing counselor, to discuss your situation.

STEP ONE: NOTICE OF DEFAULT. The first step in the foreclosure process is the Mortgagee usually sends you a written notice of default, which occurs after you are past due on your mortgage payment. The Mortgagee will tell you in the notice how much time you have to pay the required amount that is past due and, by paying, will return your loan to good standing.

STEP TWO: PROCEEDING TO FORECLOSURE. If you do not pay the required amount past due by the deadline in the notice of default, the Mortgagee may elect to proceed to collect the balance due on your loan through foreclosure. In Hawaii, there are two types of foreclosures: judicial and nonjudicial.

In a JUDICIAL FORECLOSURE, the Mortgagee files a lawsuit against you in order to obtain a court judgment that you owe the balance due under your loan and to obtain an order to sell the property. The initial legal document you will receive in the lawsuit is called the complaint. You should consult an attorney of your choice who can advise you as to the steps needed to protect your rights. Judicial foreclosure involves the sale of the mortgaged property under the supervision of the court. You will receive notice of the foreclosure case hearings and the sale date and the judicial decision is announced after a hearing in court. The sale of the property must be approved by the court before it can be completed.

In a NONJUDICIAL FORECLOSURE, the process follows the procedures spelled out in Chapter 667 of the Hawaii Revised Statutes and in your mortgage. The nonjudicial procedures allow a Mortgagee to foreclose on and sell the property identified in the mortgage without filing a lawsuit or court supervision. This nonjudicial foreclosure is also called a power of sale foreclosure. The Mortgagee starts the process by giving you a written notice of default and of the Mortgagee's intent to sell the property.

After the required time has elapsed, you will be sent a notice of nonjudicial foreclosure sale, which will tell you the date and location of the sale.

In a NONJUDICIAL foreclosure, if you own an interest in the property you may have the right to participate in the Mortgage Foreclosure Dispute Resolution Program or to convert the nonjudicial foreclosure into a judicial foreclosure. The nonjudicial foreclosure may not proceed during the dispute resolution process or after it has been converted to a judicial foreclosure.

PLEASE NOTE: Even if a judicial or nonjudicial foreclosure has commenced, you may be able to reinstate the loan and keep your home if you pay the delinquent amount then due and the foreclosure expenses that your Mortgagee has incurred. You must contact the Mortgagee as soon as possible to determine whether reinstatement is possible.

STEP THREE: PUBLIC SALE. The sale of a foreclosed home is usually made through a public auction, where the highest bidder who can make a cash deposit of up to 10% of the bid can buy the property. In a judicial foreclosure, the court appoints a third party commissioner to advertise and conduct the sale. In a nonjudicial foreclosure, the Mortgagee advertises and conducts the sale. In both types of sales, the Mortgagee has the right to buy the property by submitting a credit

bid based upon the balance owed on the mortgage, so long as its bid is higher than any other bids. If the Mortgagee buys the property, the Mortgagee has the right to re-sell it in a private sale at a later date.

STEP FOUR: DISBURSEMENT OF PROCEEDS; POTENTIAL DEFICIENCY JUDGMENT. After the foreclosure sale is completed, the proceeds are paid out to lien holders, including the Mortgagee, in the order set by law and lastly to you if there are any proceeds left.

In a JUDICIAL FORECLOSURE, the court tells the commissioner whom to pay and how much. If the property did not sell for enough to pay off the balance due under your loan, the Mortgagee has the right to ask the court for a deficiency judgment against you for the difference.

In a NONJUDICIAL FORECLOSURE, the Mortgagee distributes the proceeds from the sale. If you are an owner-occupant, the law prohibits a deficiency judgment against you unless the debt is secured by other collateral.

READ THE NOTE AND MORTGAGE CAREFULLY TO UNDERSTAND WHAT IS REQUIRED AND HOW TO AVOID FORECLOSURE, AND CONSULT WITH AN ATTORNEY REGARDING YOUR LEGAL RIGHTS.

(c) The requirements of this section shall apply only to written loan applications submitted, or to loans where residential property is required to be used as security, after August 31, 2012."

SECTION 27. Section 667-53, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) An owner-occupant of a residential property that is subject to non-judicial foreclosure under part [I-~~or~~] II may convert the action to a judicial foreclosure provided that:

- (1) A petition conforming to section 667-54 shall be filed with the circuit court in the circuit where the residential property is located, stating that the owner-occupant of the property elects to convert the nonjudicial foreclosure to a judicial foreclosure proceeding, no later than thirty days after the foreclosure notice is served on the owner-occupant, as required by section [667-5-~~or~~] 667-22;
- (2) Within forty-five days of the filing of the petition, all owner-occupants and mortgagors of an interest in the residential property whose interests are pledged or otherwise encumbered by the mortgage that is being foreclosed and all persons who have signed the promissory note or other instrument evidencing the debt secured by the mortgage that is being foreclosed, including without limitation co-obligors and guarantors, shall file a statement in the circuit court action that they agree to submit themselves to the judicial process and the jurisdiction of the circuit court; provided further that if this condition is not satisfied, the circuit court action may be dismissed with prejudice as to the right of any owner-occupant to convert the action to a judicial proceeding, and the mortgagee may proceed nonjudicially;
- (3) Filing a petition pursuant to paragraph (1) shall automatically stay the nonjudicial foreclosure action unless and until the judicial proceeding has been dismissed;
- (4) The person filing the petition pursuant to paragraph (1) shall have an affirmative duty to promptly notify the Hawaii attorney who is

handling the nonjudicial foreclosure about the filing of the complaint for conversion;

- (5) All parties joined in the converted judicial proceeding may assert therein any claims and defenses that they could have asserted had the action originally been commenced as a judicial foreclosure action; and
- (6) ~~[Notwithstanding chapter 607, the]~~ The fee for filing the petition shall be ~~[not more than \$525, of which]~~ \$250, which shall be deposited into the mortgage foreclosure dispute resolution special fund established under section 667-86~~;~~ ~~provided that if the mortgage foreclosure dispute resolution program under part V has not yet been implemented, the filing fee shall be not more than \$300].~~
- (b) This section shall not apply to foreclosures of association liens that arise under a declaration filed pursuant to chapter 421J, 514A, or 514B."

SECTION 28. Section 667-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"~~[(a)]~~ A petition filed pursuant to section 667-53 shall contain at a minimum:

- (1) A caption setting forth the name of the court, the title of the action, and the file number; provided that the title of the action shall include the names of the filing party as petitioner and the foreclosing party as the respondent;
- (2) The name, mailing address, and telephone number of the filing party;
- (3) The address or tax map key number, and the certificate of title or transfer certificate of title number if ~~[within the land court's jurisdiction,]~~ registered in the land court, of the property subject to the foreclosure action;
- (4) A statement identifying all other owner-occupants and mortgagors of the property whose interests are pledged or otherwise encumbered by the mortgage that is being foreclosed and all persons who have signed the promissory note or other instrument evidencing the debt secured by the mortgage that is being foreclosed, including without limitation co-obligors and guarantors;
- (5) A certification under penalty of perjury that the filing party is an owner-occupant of the subject property and seeks to convert the nonjudicial foreclosure to a judicial proceeding;
- (6) A statement certifying that the filing party served a copy of the petition on the attorney identified in the foreclosure notice under section ~~[667-5 or]~~ 667-22 either by personal delivery at, or by postage prepaid United States mail to, the address of the attorney as set forth in the foreclosure notice under section ~~[667-5 or]~~ 667-22; and
- (7) A copy of the foreclosure notice that was served on the filing party pursuant to section ~~[667-5 or]~~ 667-22 and for which the filing party is seeking to convert to a judicial proceeding."

SECTION 29. Section 667-55, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§667-55]]~~ Notice of default and intention to foreclose; residential property; required statement on conversion. (a) The foreclosure notice that is served as required under section ~~[667-5 or]~~ 667-22 shall include, in addition to

the contents required under section [667-5 or] 667-22, a statement printed in not less than fourteen-point font as follows:

"IF THE PROPERTY BEING FORECLOSED IS IMPROVED AND USED FOR RESIDENTIAL PURPOSES, AN OWNER-OCCUPANT OF THE PROPERTY (DEFINED IN CHAPTER 667 OF THE HAWAII REVISED STATUTES AS A PERSON WHO, AT THE TIME THIS NOTICE IS SERVED, OWNS AN INTEREST IN THE RESIDENTIAL PROPERTY THAT IS SUBJECT TO THE MORTGAGE BEING FORECLOSED AND THE RESIDENTIAL PROPERTY HAS BEEN THE PRIMARY RESIDENCE CONTINUOUSLY FOR NOT LESS THAN TWO HUNDRED DAYS) HAS THE RIGHT TO CONVERT A NON-JUDICIAL FORECLOSURE PROCEEDING TO A JUDICIAL FORECLOSURE WHERE CLAIMS AND DEFENSES MAY BE CONSIDERED BY A COURT OF LAW. TO EXERCISE THIS RIGHT, THE OWNER-OCCUPANT SHALL COMPLETE AND FILE THE ATTACHED FORM WITH THE CIRCUIT COURT IN THE CIRCUIT WHERE THE PROPERTY IS LOCATED, WITHIN THIRTY DAYS AFTER SERVICE OF THIS NOTICE.

IN ADDITION, ALL OWNER-OCCUPANTS AND MORTGAGORS OF THE RESIDENTIAL PROPERTY WHOSE INTERESTS HAVE BEEN PLEDGED OR OTHERWISE ENCUMBERED BY THE MORTGAGE THAT IS BEING FORECLOSED AND ALL PERSONS WHO HAVE SIGNED THE PROMISSORY NOTE OR OTHER INSTRUMENT EVIDENCING THE DEBT SECURED BY THE MORTGAGE THAT IS BEING FORECLOSED, INCLUDING, WITHOUT LIMITATION, CO-OBLIGORS AND GUARANTORS, SHALL FILE A STATEMENT IN THE CIRCUIT COURT ACTION THAT THEY AGREE TO SUBMIT TO THE JUDICIAL PROCESS AND THE JURISDICTION OF THE CIRCUIT COURT WITHIN FORTY-FIVE DAYS OF THE FILING OF THE ATTACHED FORM. FAILURE TO SATISFY THIS CONDITION MAY RESULT IN DISMISSAL OF THE CIRCUIT COURT ACTION WITH PREJUDICE.

AN OWNER-OCCUPANT SHALL PROMPTLY NOTIFY THE HAWAII ATTORNEY LISTED IN THIS NOTICE ABOUT THE FILING OF THE CONVERSION FORM.

MORTGAGE FORECLOSURE DISPUTE RESOLUTION MAY BE AVAILABLE IN NONJUDICIAL FORECLOSURE ACTIONS AS AN ALTERNATIVE FOR OWNER-OCCUPANTS ATTEMPTING TO AVOID FORECLOSURE OR TO MITIGATE THE EFFECTS OF FORECLOSURE ON AN OWNER-OCCUPANT. HOWEVER, IF ~~[AN OWNER-OCCUPANT FILES FOR CONVERSION,]~~ THE NONJUDICIAL FORECLOSURE IS CONVERTED TO A JUDICIAL FORECLOSURE ACTION, DISPUTE RESOLUTION MAY NOT THEREAFTER BE AVAILABLE UNLESS ORDERED BY A JUDGE.

A FORECLOSING LENDER WHO COMPLETES A NON-JUDICIAL FORECLOSURE OF RESIDENTIAL PROPERTY ~~[SHALL]~~ COULD BE PROHIBITED UNDER HAWAII LAW FROM PURSUING A DEFICIENCY JUDGMENT AGAINST A MORTGAGOR ~~[UNLESS THE DEBT IS SECURED BY~~

~~OTHER COLLATERAL, OR AS OTHERWISE PROVIDED BY LAW]. IF THIS ACTION IS CONVERTED TO A JUDICIAL PROCEEDING, HOWEVER, THEN ALL REMEDIES AVAILABLE TO A LENDER MAY BE ASSERTED, INCLUDING THE RIGHT TO SEEK A DEFICIENCY JUDGMENT.~~

(b) The statement required by this section shall not be required to be included in ~~[the notice of sale published pursuant to 667-5(a)(1) or]~~ the public notice of public sale published pursuant to section 667-27."

SECTION 30. Section 667-56, Hawaii Revised Statutes, is amended to read as follows:

"[§667-56] Prohibited conduct. It shall be a prohibited practice for any foreclosing mortgagee to engage in any of the following practices:

- (1) Holding a public sale on a date, at a time, or at a place other than that described in the public notice of the public sale or a properly noticed postponement;
- (2) Specifying a fictitious place in the public notice of the public sale;
- (3) Conducting a postponed public sale on a date other than the date described in the new public notice of the public sale;
- (4) Delaying the delivery of the recorded, conformed copy of the conveyance document to a bona fide purchaser who purchases in good faith for more than ~~[forty-five]~~ sixty days after the completion of the public sale;
- (5) Completing nonjudicial foreclosure proceedings during short sale escrows with a bona fide purchaser if the short sale offer is at least ~~[five]~~ ten per cent greater than the public sale price; provided that escrow is opened within ten days and closed within forty-five days of the public sale; and provided further that a bona fide short sale purchaser shall have priority over any other purchaser;
- (6) Completing nonjudicial foreclosure proceedings during bona fide loan modification negotiations with the mortgagor; or
- (7) Completing nonjudicial foreclosure proceedings against a mortgagor who has been accepted or is being evaluated for consideration for entry into [a] any federal loan modification program before obtaining a certificate or other documentation confirming that the mortgagor is no longer eligible for, or an active participant of, that federal program."

SECTION 31. Section 667-57, Hawaii Revised Statutes, is amended to read as follows:

"[§667-57] Suspension of foreclosure actions by junior lienholders. (a) Upon initiation of a foreclosure action pursuant to part ~~[I]~~ IA or part II by a foreclosing mortgagee ~~[as defined in section 667-21(b)]~~, no junior lienholder shall be permitted to initiate or continue a nonjudicial foreclosure ~~[pursuant to part I]~~ until the foreclosure initiated by the foreclosing mortgagee has been concluded by a judgment issued by a court pursuant to section ~~[667-1,]~~ 667-1.5, the recording of an affidavit after public sale pursuant to section ~~[667-5 or]~~ 667-33, or the filing of ~~[a settlement document]~~ an agreement under the mortgage foreclosure dispute resolution provisions of section 667-81.

(b) Upon initiation of a foreclosure action pursuant to ~~[part I or]~~ part II by a foreclosing mortgagee ~~[as defined in section 667-21(b)]~~, no junior lienholder shall be permitted to initiate or continue a nonjudicial foreclosure ~~[pursuant to~~

~~part H]~~ during the pendency of a stay pursuant to section 667-83; provided that a junior lienholder may initiate or continue with a nonjudicial foreclosure ~~pursuant to part H]~~ if ~~[the]~~:

- (1) ~~The junior lien foreclosure was initiated before the foreclosure action by the foreclosing mortgagee[-]; or~~
- (2) ~~The junior lienholder is an association and has not been provided notice of the foreclosure action, pursuant to section 667-21.5, or has not received written notification of a case opening pursuant to section 667-79."~~

SECTION 32. Section 667-58, Hawaii Revised Statutes, is amended to read as follows:

~~[[§667-58]]~~ Valid notice[-]; affiliate statement. (a) Any notices made pursuant to this chapter may be issued only by persons authorized by a foreclosing mortgagee or lender pursuant to an affiliate statement signed by that foreclosing mortgagee or lender and recorded at the bureau of conveyances identifying the agency or affiliate relationship and the authority granted or conferred to that agent or representative.

(b) The bureau of conveyances document number for the affiliate statement required under subsection (a) shall be included in any notice required to be personally served upon the mortgagor or borrower under this chapter.

(c) Any notice provided by a mortgage servicer, including an agent, employee, or representative of that mortgage servicer, shall be issued only by a mortgage servicer that has been listed in the affiliate statement filed by the foreclosing mortgagee or lender under subsection (a); provided further that the mortgage servicer shall be licensed under or otherwise exempt from chapter 454M. The agency relationship or affiliation of the mortgage servicer and the foreclosing mortgagee or lender and any authority granted or conferred to that mortgage servicer shall be described in the affiliate statement filed under both subsection (a) and section 454M-5(a)(4)(F).

(d) No attorney of a mortgage servicer, foreclosing mortgagee, or lender shall be required to be included in any affiliate statement of a foreclosing mortgagee or lender. No notice or other correspondence made by any attorney for the foreclosing mortgagee or lender shall be required to reference any affiliate statement made by the foreclosing mortgagee or lender. Any notice or other correspondence made by any attorney for a mortgage servicer shall reference, in accordance with subsection (b), the appropriate affiliate statement of the foreclosing mortgagee or lender authorizing the mortgage servicer to act."

SECTION 33. Section 667-59, Hawaii Revised Statutes, is amended to read as follows:

~~[[§667-59]]~~ Actions and communications with the mortgagor in connection with a foreclosure. A foreclosing mortgagee shall be bound by all agreements, obligations, representations, or inducements made on its behalf by its agents, including but not limited to its employees, representatives, mortgage servicers, or persons authorized by a foreclosing mortgagee or lender pursuant to an affiliate statement recorded in the bureau of conveyances pursuant to section 667-58.

~~[For purposes of this section, "foreclosing mortgagee" has the same meaning as in section 667-21.]~~

SECTION 34. Section 667-60, Hawaii Revised Statutes, is amended to read as follows:

“[§667-60] Unfair or deceptive act or practice[-]; transfer of title. (a) Any foreclosing mortgagee who [violates] engages in any of the following violations of this chapter shall have committed an unfair or deceptive act or practice under section 480-2[-];

- (1) Failing to provide a borrower or mortgagor with, or failing to serve as required, the information required by section 667-22 or 667-55;
- (2) Failing to publish, or to post, information on the mortgaged property, as required by section 667-27 or 667-28;
- (3) Failing to take any action required by section 667-24 if the default is cured or an agreement is reached;
- (4) Engaging in conduct prohibited under section 667-56;
- (5) Holding a public sale in violation of section 667-25;
- (6) Failing to include in a public notice of public sale the information required by section 667-27 or section 667-28;
- (7) Failing to provide the information required by section 667-41;
- (8) With regard to mortgage foreclosure dispute resolution under part V:
 - (A) Failing to provide notice of the availability of dispute resolution as required by section 667-75;
 - (B) Participating in dispute resolution without authorization to negotiate a loan modification, or without access to a person so authorized, as required by section 667-80(a)(1);
 - (C) Failing to provide required information or documents as required by section 667-80(c); or
 - (D) Completing a nonjudicial foreclosure if a neutral's closing report under section 667-82 indicates that the foreclosing mortgagee failed to comply with requirements of the mortgage foreclosure dispute resolution program;
- (9) Completing a nonjudicial foreclosure while a stay is in effect under section 667-83;
- (10) Failing to distribute sale proceeds as required by section 667-31;
- (11) Making any false statement in the affidavit of public sale required by section 667-32;
- (12) Attempting to collect a deficiency in violation of section 667-38; and
- (13) Failing to file a foreclosure notice with the department as required by section 667-76(a).

(b) Notwithstanding subsection (a), the transfer of title to the purchaser of the property as a result of a foreclosure under this chapter shall only be subject to avoidance under section 480-12 for violations described in subsection (a)(1) to (9) if such violations are shown to be substantial and material; provided that a foreclosure sale shall not be subject to avoidance under section 480-12 for violation of section 667-56(5).

(c) Any action to void the transfer of title to the purchaser of property pursuant to a foreclosure by power of sale under part II of this chapter shall be filed in the circuit court of the circuit within which the foreclosed property is situated no later than sixty days following the recording of the affidavit required by section 667-32. If no such action is filed within the sixty-day period, then title to the property shall be deemed conclusively vested in the purchaser free and clear of any claim by the mortgagor or anyone claiming by, through, or under the mortgagor.”

SECTION 35. Section 667-63, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A mortgage creditor having a mortgage lien on a time share interest who desires notice that another mortgage creditor having a mortgage lien on the time share interest intends to foreclose and sell the mortgaged time share interest, pursuant to the power of sale under section 667-62, may submit a written request to the mortgagee who is foreclosing or who may foreclose the mortgage by power of sale, asking to receive notice of the mortgagee’s intention to foreclose the mortgage under section 667-62. The request for notice:

- (1) May be submitted any time after the recordation ~~[or filing]~~ of the subject mortgage ~~[at the bureau of conveyances or the land court, but shall be]~~; provided that the request is submitted prior to completion of publication of notice of the intention to foreclose the mortgage and of the sale of the mortgaged time share interest;
- (2) Shall be signed by the mortgage creditor desiring to receive notice, or its authorized representative; and
- (3) Shall specify the name and address of the person to whom the notice is to be mailed.”

SECTION 36. Section 667-71, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) This part shall apply to nonjudicial foreclosures conducted by power of sale under ~~[parts I and]~~ part II, of residential real property that is occupied by one or more mortgagors who are owner-occupants.

(b) This part shall not apply to actions by an association to foreclose on a lien for amounts owed to the association that arise under a declaration filed pursuant to chapter 421J, 514A, or 514B, or to a mortgagor who has previously participated in dispute resolution under this part for the same property on the same mortgage loan.”

SECTION 37. Section 667-73, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The department is authorized to contract with county, state, or federal agencies, and with private organizations, approved housing counselors, and approved budget and credit counselors for the performance of any of the functions of this part. These contracts shall not be subject to chapter 103D or 103F.”

SECTION 38. Section 667-74, Hawaii Revised Statutes, is amended to read as follows:

“[§667-74]] Availability of dispute resolution required before foreclosure. Before a public sale may be conducted pursuant to section ~~[667-5 or]~~ 667-25 for a residential property that is occupied by an owner-occupant ~~[as a primary residence]~~, the foreclosing mortgagee ~~[shall]~~, at the election of the owner-occupant, shall participate in the mortgage foreclosure dispute resolution program under this part to attempt to negotiate an agreement that avoids foreclosure or mitigates damages in cases where foreclosure is unavoidable.”

SECTION 39. Section 667-75, Hawaii Revised Statutes, is amended to read as follows:

“[§667-75]] Notice of dispute resolution availability required. (a) A foreclosure notice served pursuant to section ~~[667-5 or]~~ 667-22(e) shall include

notice that the mortgagee is required, at the election of an owner-occupant, to participate in the mortgage foreclosure dispute resolution program pursuant to this part to attempt to avoid foreclosure or to mitigate damages where foreclosure is unavoidable.

(b) The notice required by subsection (a) shall be printed in not less than fourteen-point font and include:

- (1) The name and contact information of the mortgagor and the mortgagee;
- (2) The subject property address and legal description, including tax map key number and the certificate of title or transfer certificate of title number if [within the land court's jurisdiction;] registered in the land court;
- (3) The name and contact information of a person or entity authorized to negotiate a loan modification on behalf of the mortgagee;
- (4) A statement that the mortgagor shall consult with an approved housing counselor or an approved budget and credit counselor at least thirty days prior to the first day of a scheduled dispute resolution session;
- (5) Contact information for all ~~[local]~~ approved housing counselors;
- (6) Contact information for all ~~[local]~~ approved budget and credit counselors;
- (7) A statement that the mortgagor electing to participate in the mortgage foreclosure dispute resolution program shall provide a certification under penalty of perjury to the department that the mortgagor is an owner-occupant of the subject property, including supporting documentation;
- (8) A general description of the information that an owner-occupant electing to participate in the mortgage foreclosure dispute resolution program is required to provide to participate in the program as described under section 667-80(c)(2);
- (9) A statement that the owner-occupant shall elect to participate in the mortgage foreclosure dispute resolution program pursuant to this part no later than thirty days after the department's mailing of the notice or the right shall be waived."

SECTION 40. Section 667-76, Hawaii Revised Statutes, is amended to read as follows:

"[~~§667-76~~] Mortgagee's filing of notice with department; filing fee[-]; electronic public notice of public sale. (a) Within three days after a mortgagee serves a foreclosure notice on an owner-occupant pursuant to section ~~[667-5 or]~~ 667-22, the mortgagee shall file the foreclosure notice with the department and pay a filing fee of \$250, which shall be deposited into the mortgage foreclosure dispute resolution special fund established under section 667-86.

(b) ~~[Violation of this section shall constitute an unfair and deceptive act or practice subject to section 480-2.]~~ **A mortgagee who elects to publish a public notice of public sale electronically pursuant to section 667-27(d)(2)(A) shall publish the notice by filing the same with the department and paying a filing fee of \$300, which shall be deposited into the mortgage foreclosure dispute resolution special fund established under section 667-86."**

SECTION 41. Section 667-77, Hawaii Revised Statutes, is amended to read as follows:

“[H]§667-77[H] Notification to mortgagor by department. Within ten days after the mortgagee’s filing of a notice of default and intention to foreclose with the department, the department shall mail a written notification by registered or certified mail to the mortgagor that a notice of default and intention to foreclose has been filed with the department. The notification shall inform the mortgagor of an owner-occupant’s right to elect to participate in the foreclosure dispute resolution program and shall include:

- (1) Information about the mortgage foreclosure dispute resolution program;
- (2) A form for an owner-occupant to elect or to waive participation in the mortgage foreclosure dispute resolution program pursuant to this part that shall contain instructions for the completion and return of the form to the department and the department’s mailing address;
- (3) A statement that the mortgagor electing to participate in the mortgage foreclosure dispute resolution program shall provide a certification under penalty of perjury to the department that the mortgagor is an owner-occupant of the subject property, including a description of acceptable supporting documentation as required by section 667-78(a)(2);
- (4) A statement that the owner-occupant shall elect to participate in the mortgage foreclosure dispute resolution program pursuant to this part no later than thirty days after the department’s mailing of the notice or the owner-occupant shall be deemed to have waived the option to participate in the mortgage foreclosure dispute resolution program;
- (5) A description of the information required under section 667-80(c)(2) that the owner-occupant shall provide to the mortgagee and the neutral assigned to the dispute resolution;
- (6) A statement that the owner-occupant shall consult with an approved housing counselor or approved budget and credit counselor at least thirty days prior to the first day of a scheduled dispute resolution session;
- (7) Contact information for all ~~[local]~~ approved housing counselors;
- (8) Contact information for all ~~[local]~~ approved budget and credit counselors; and
- (9) Contact information for the department.

The notification shall be mailed to the subject property address and any other addresses for the mortgagor as provided in the mortgagee’s notice of dispute resolution under ~~[H]section[H]~~ 667-75 and the foreclosure notice under section ~~[667-5-06]~~ 667-22(a).”

SECTION 42. Section 667-78, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:
“(a) An owner-occupant elects to participate in the mortgage foreclosure dispute resolution program by returning to the department:
 - (1) The completed program election form provided ~~[pursuant]~~:
 - (A) Pursuant to section 667-77(2); or
 - (B) On a website maintained by the department;
 - (2) Certification under penalty of perjury that the mortgagor is an owner-occupant, accompanied with any supporting documentation, including copies of recent utility billing statements, voter registra-

tion records, real estate property tax records, or state identification forms; and

- (3) A program fee of \$300.

The completed form and fees shall be received by the department no later than thirty days after mailing of the department's notification pursuant to section 667-77."

2. By amending subsection (c) to read:

"(c) If the owner-occupant does not elect to participate in dispute resolution pursuant to this part, the department shall notify the mortgagee within ten days of receiving an election form indicating nonelection or the termination of the thirty-day time period for election. After receiving the department's notification, the mortgagee may proceed with the nonjudicial foreclosure process according to the process provided in ~~[part I of]~~ part II of this chapter~~[-as applicable]~~."

SECTION 43. Section 667-79, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) If an owner-occupant elects to participate in the mortgage foreclosure dispute resolution program, the department shall open a dispute resolution case. Within twenty days of receipt of the owner-occupant's election form and fee in accordance with section 667-78, the department shall mail written notification of the case opening to the parties and, if applicable, the condominium or other homeowner association of the project where the owner-occupant's property is located, by registered mail, return receipt requested, which shall include:

- (1) Notification of the date, time, and location of the dispute resolution session;
- (2) An explanation of the dispute resolution process;
- (3) Information about the dispute resolution program requirements; and
- (4) Consequences and penalties for noncompliance.

The dispute resolution session shall be scheduled for a date no less than ~~[thirty]~~ forty and no more than ~~[sixty]~~ seventy days from the date of the notification of case opening, unless mutually agreed to by the parties and the neutral."

2. By amending subsection (c) to read:

"(c) The written notification of a case opening under this section shall operate as a stay of the foreclosure proceeding in accordance with section 667-83~~[-]~~ and may be ~~[filed or]~~ recorded~~[-as appropriate, at the land court or bureau of conveyances]~~."

SECTION 44. Section 667-80, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The parties to a dispute resolution process conducted under this part shall consist of the owner-occupant or the owner-occupant's representative, and the mortgagee or the mortgagee's representative; provided that:

- (1) A representative of the mortgagee who participates in the dispute resolution shall be authorized to negotiate a loan modification on behalf of the mortgagee or shall have, at all stages of the dispute resolution process, direct access by telephone, videoconference, or other immediately available contemporaneous telecommunications medium to a person who is so authorized;
- (2) The mortgagee and owner-occupant may be represented by ~~[counsel;]~~ an attorney; and

- (3) The owner-occupant may be assisted by an approved housing counselor or approved budget and credit counselor.”

2. By amending subsection (c) to read:

“(c) The parties shall comply with all information requests from the department or neutral. No less than fifteen days prior to the first day of the scheduled dispute resolution session:

- (1) The mortgagee shall provide to the department and the mortgagor:
 - (A) A copy of the promissory note, signed by the mortgagor, including any endorsements, allonges, amendments, or riders to the note evidencing the mortgage debt;
 - (B) A copy of the mortgage document and any amendments, riders, or other documentation evidencing the mortgagee’s right of nonjudicial foreclosure and interest in the property including any interest as a successor or assignee; and
 - (C) Financial records and correspondence that confirm the mortgage loan is in default.
- (2) The owner-occupant shall provide to the department and the mortgagee:
 - (A) Documentation showing income qualification for a loan modification, including any copies of pay stubs, W-2 forms, social security or disability income, retirement income, child support income, or any other income that the owner-occupant deems relevant to the owner-occupant’s financial ability to repay the mortgage;
 - (B) Any records or correspondence available which may dispute that the mortgage loan is in default;
 - (C) Any records or correspondence available evidencing a loan modification or amendment;
 - (D) Any records or correspondence available that indicate the parties are currently engaged in bona fide negotiations to modify the loan or negotiate a settlement of the delinquency;
 - (E) Names and contact information for approved housing counselors, approved budget and credit counselors, or representatives of the mortgagee, with whom the owner-occupant may have or is currently working with to address the delinquency; and
 - (F) Verification of counseling by an approved housing counselor or approved budget and credit counselor.”

SECTION 45. Section 667-81, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) If, despite the parties’ participation in the dispute resolution process and compliance with the requirements of this part, the parties are not able to come to an agreement, the neutral shall file a closing report with the department that the parties met the program requirements. The mortgagee may ~~file or~~ record the report ~~at the bureau of conveyances or the land court, as appropriate~~. Upon recording of the report pursuant to this subsection, the foreclosure process shall resume along the timeline as it existed on the date before the mortgagor elected dispute resolution, and may proceed as otherwise provided by law. The mortgagee shall notify the mortgagor of the recording date and document number of this report and the deadline date to cure default in an amended foreclosure notice. Nothing in this subsection shall be construed to require the neutral to wait the full sixty days allotted for dispute resolution to determine that the parties were unable to reach an agreement and file a report.

(c) If the parties have complied with the requirements of this part and have reached an agreement, the agreement shall be memorialized in ~~[a settlement document]~~ writing and signed by the parties or their authorized representatives. ~~[If the parties or their authorized representatives participate in the dispute resolution session in person, the settlement document shall be signed in the presence of the neutral. If any of the parties or their authorized representatives participate in the dispute resolution through telephone, videoconference, or other immediately available contemporaneous telecommunications medium, the settlement document shall be signed and returned to the neutral no later than ten days after the conclusion of the dispute resolution session.]~~ The parties shall be responsible for drafting any agreement reached~~[- and for filing or recording with the land court or the bureau of conveyances, as appropriate.]~~ and enforcing the ~~[settlement document:]~~ agreement. ~~[The neutral shall file the settlement document with the neutral's closing report.]~~ The ~~[settlement document]~~ agreement shall be a contract between the parties and shall be enforceable in a private contract action in a court of appropriate jurisdiction in the event of breach by either party. If the ~~[settlement document]~~ agreement allows for foreclosure or other transfer of the subject property, the stay of the foreclosure under section 667-83 shall be released upon ~~[filing or recording the settlement document with the land court or bureau of conveyances, as appropriate.]~~ the recordation of the neutral's closing report. Thereafter, the office of the assistant registrar of the land court or bureau of conveyances may record a notice of sale or other conveyance document, as appropriate.

(d) If the parties to a dispute resolution process reach an agreement which resolves the matters at issue in the dispute resolution before the first day of the scheduled dispute resolution session scheduled pursuant to this section, the parties shall notify the neutral by that date. The neutral shall thereafter issue a closing report that the parties have reached an agreement prior to the commencement of a dispute resolution session. If the agreement provides for foreclosure, the parties shall memorialize the agreement in ~~[a] writing, which shall be signed by both parties [and provided to the neutral. Any agreement authorizing foreclosure shall be attached to the neutral's closing report].~~ The parties may ~~[file or]~~ record the report ~~[at the bureau of conveyances or the land court, as appropriate].~~ If the agreement authorizes foreclosure, the stay of the foreclosure under section 667-83 shall be released upon ~~[filing or recording with the land court or bureau of conveyances, as appropriate.]~~ the recordation of the report. Thereafter, the land court or bureau of conveyances may record a notice of sale or other conveyance document, as appropriate. No fees shall be refunded if the parties come to an agreement prior to a dispute resolution session conducted pursuant to this part."

SECTION 46. Section 667-82, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The neutral's closing report shall indicate if the mortgagee or the owner-occupant failed to comply with requirements of the mortgage foreclosure dispute resolution program.

- (1) In the case of the mortgagee, failure to comply with the requirements of the program may consist of:
 - (A) Participation in dispute resolution without the authority to negotiate a loan modification or without access at all stages of the dispute resolution process to a person who is so authorized;
 - (B) Failure to provide the required information or documents;
 - (C) Refusal to cooperate or participate in dispute resolution; or

- (D) Refusal or failure to pay program fees under section 667-79 in a timely manner.
- (2) In the case of the owner-occupant, failure to comply with the requirements of the program may consist of:
 - (A) Failure to provide the required information or documents; or
 - (B) Refusal to cooperate or participate in dispute resolution[-]; provided that failure by the mortgagee and the owner-occupant to reach an agreement to resolve the dispute shall not constitute failure by the mortgagee or the owner-occupant to comply with the requirements of the mortgage foreclosure dispute resolution program."

SECTION 47. Section 667-83, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The written notification of a case opening under section 667-79 shall operate as a stay of the foreclosure proceeding[-] and may be ~~filed or~~ recorded[-; as appropriate, at the land court or bureau of conveyances]; provided that:

- (1) The written notification shall not act as a stay on a foreclosure proceeding by an association unless the association has been provided notice pursuant to sections 667-5.5, 667-21.5, or 667-79; and
- (2) The written notification shall not act as a stay on a foreclosure proceeding for the purpose of the date by which the default must be cured pursuant to section 667-22(a)(6)."

SECTION 48. Section 667-86, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) All persons who record an affidavit in the office of the assistant registrar of the land court, pursuant to section 501-118, or who record a conveyance document in the bureau of conveyances for an owner-occupied property subject to a nonjudicial power of sale foreclosure shall pay a fee of \$100, which shall be deposited into the mortgage foreclosure dispute resolution special fund on a quarterly basis."

PART IV

SECTION 49. Act 48, Session Laws of Hawaii 2011, is amended by amending section 45 to read as follows:

"SECTION 45. This Act shall take effect upon its approval; provided that:

- (1) The mortgage foreclosure dispute resolution program established by section 1 of this Act shall be operative no later than October 1, 2011; and
- ~~[(2) Sections 1, 13, and 14 shall be repealed on September 30, 2014, and sections 514A-90(h) and 514B-146(h), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act;~~
- ~~[(3)] (2) Section 10 shall take effect on July 1, 2012[;~~
- ~~[(4) Section 5 shall be repealed on December 31, 2012;~~
- ~~[(5) Section 7 shall be repealed on September 30, 2014, and section 26-9(o), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and~~
- ~~[(6) Upon the repeal of section 1, all moneys remaining in the mortgage foreclosure dispute resolution special fund established under section 667-P, Hawaii Revised Statutes, shall be transferred to the compli-~~

~~ance resolution fund established under section 26-9(o), Hawaii Revised Statutes].”~~

PART V

SECTION 50. Section 667-5, Hawaii Revised Statutes, is repealed.

SECTION 51. Section 667-5.7, Hawaii Revised Statutes, is repealed.

SECTION 52. Section 667-6, Hawaii Revised Statutes, is repealed.

SECTION 53. Section 667-7, Hawaii Revised Statutes, is repealed.

SECTION 54. Section 667-8, Hawaii Revised Statutes, is repealed.

SECTION 55. Section 667-14, Hawaii Revised Statutes, is repealed.

SECTION 56. Section 667-15, Hawaii Revised Statutes, is repealed.

SECTION 57. Section 667-21.6, Hawaii Revised Statutes, is repealed.

SECTION 58. Section 667-26, Hawaii Revised Statutes, is repealed.

SECTION 59. Section 667-50, Hawaii Revised Statutes, is repealed.

SECTION 60. Section 667-61, Hawaii Revised Statutes, is repealed.

SECTION 61. Section 667-72, Hawaii Revised Statutes, is repealed.

PART VI

SECTION 62. Section 667-F, Hawaii Revised Statutes, is amended to read as follows:

“§667-F Public notice of public sale; contents; distribution; publication.

(a) The association shall prepare the public notice of the public sale. The public notice shall state:

- (1) The date, time, and place of the public sale;
- (2) The unpaid balance of the moneys owed to the association;
- (3) A description of the unit, including the address and the tax map key number of the unit;
- (4) The name of the unit owner;
- (5) The name of the association;
- (6) The name of any prior or junior creditors having a recorded lien on the unit before the recordation of the notice of default and intention to foreclose under section 667-C;
- (7) The name, the address in the State, and the telephone number in the State of the person in the State conducting the public sale; and
- (8) The terms and conditions of the public sale.

(b) The public notice shall also contain wording substantially similar to the following in all capital letters:

“THE DEFAULT UNDER THE ASSOCIATION DOCUMENTS MAY BE CURED NO LATER THAN THREE BUSINESS DAYS BEFORE THE DATE OF THE PUBLIC SALE OF THE UNIT

BY PAYING THE ENTIRE AMOUNT THAT WOULD BE OWED TO THE ASSOCIATION PLUS THE ASSOCIATION'S ATTORNEY'S FEES AND COSTS, AND ALL OTHER FEES AND COSTS INCURRED BY THE FORECLOSING ASSOCIATION RELATED TO THE DEFAULT, UNLESS OTHERWISE AGREED TO BETWEEN THE ASSOCIATION AND THE UNIT OWNER. THERE IS NO RIGHT TO CURE THE DEFAULT OR ANY RIGHT OF REDEMPTION AFTER THAT TIME. IF THE DEFAULT IS SO CURED, THE PUBLIC SALE SHALL BE CANCELED."

(c) If the default is not cured as required by the notice of default and intention to foreclose, the association shall have a copy of the public notice of the public sale of the unit:

- (1) Mailed or delivered to the unit owners at their respective last known addresses;
- (2) Mailed or delivered to any prior or junior creditors having a recorded lien on the unit before the recordation of the notice of default and intention to foreclose under section 667-C;
- (3) Mailed or delivered to the state director of taxation;
- (4) Mailed or delivered to the director of finance of the county where the unit is located;
- (5) Posted on the unit or on such other real property of which the unit is a part; and
- (6) Mailed or delivered to any other person entitled to receive notice under section 667-5.5 or 667-21.5.
- (d) The association shall have the public notice of the public sale:
- (1) Printed in not less than seven-point font and published in the classified section of a newspaper [of] that is published at least weekly and having a general circulation in the [geographic area] county in which the unit is located. [A person may apply to the circuit court for an order confirming a newspaper to be of general circulation for purposes of this paragraph, which the court shall grant upon proof of compliance with this paragraph.] The public notice shall be published once each week for three consecutive weeks, constituting three publications. The public sale shall take place no sooner than fourteen days after the date of the publication of the third public notice advertisement; or
- (2) Not less than twenty-eight days before the date of the public sale, published on a state website at the discretion of the agency that maintains the website; provided that the public notice shall be published at least once in the format described in paragraph (1) at least fourteen days prior to the public sale.

~~(e) As used in subsection (d):~~

~~"General circulation" refers to a newspaper that:~~

- ~~(1) Contains news of a general nature; and~~
- ~~(2) Is distributed within the geographic area where the unit is located:~~
 - ~~(A) At least weekly;~~
 - ~~(B) For a minimum of one year unless interrupted by strike, natural disaster, or act of war or terror; and~~
 - ~~(C) To a minimum of three per cent of the residents of the geographic area, as determined by the last decennial United States census and as verified by an independent audit.~~

~~"Geographic area" means:~~

- (1) The real property tax zone of the unit, as shown on the real property tax maps kept by the real property tax assessment division of the county of Hawaii, if the unit is located in the county of Hawaii; or
- (2) The county in which the unit is located, if the unit is located in the city and county of Honolulu or the county of Maui or Kauai.”

SECTION 63. Section 667-R, Hawaii Revised Statutes, is amended to read as follows:

“§667-R Publication of notice of public sale. (a) The foreclosing mortgagee or association in a foreclosure by action shall have the public notice of the public sale:

- (1) Printed in not less than seven-point font and published in the classified section of a newspaper ~~[of]~~ that is published at least weekly and having a general circulation in the ~~[geographic area]~~ county in which the mortgaged property or unit is located. ~~[A person may apply to the circuit court for an order confirming a newspaper to be of general circulation for purposes of this paragraph, which the court shall grant upon proof of compliance with this paragraph.]~~ The public notice shall be published once each week for three consecutive weeks, constituting three publications. The public sale shall take place no sooner than fourteen days after the date of the publication of the third public notice advertisement; or
- (2) Not less than twenty-eight days before the date of the public sale, published on a state website at the discretion of the agency that maintains the website; provided that the public notice shall be published at least once in the format described in paragraph (1) at least fourteen days prior to the public sale.

~~[(b) As used in this section:~~

~~“General circulation” refers to a newspaper that:~~

- ~~(1) Contains news of a general nature; and~~
- ~~(2) Is distributed within the geographic area where the mortgaged property or unit is located:~~
 - ~~(A) At least weekly;~~
 - ~~(B) For a minimum of one year unless interrupted by strike, natural disaster, or act of war or terror; and~~
 - ~~(C) To a minimum of three per cent of the residents of the geographic area, as determined by the last decennial United States census and as verified by an independent audit.~~

~~“Geographic area” means:~~

- ~~(1) The real property tax zone of the mortgaged property or unit, as shown on the real property tax maps kept by the real property tax assessment division of the county of Hawaii, if the mortgaged property or unit is located in the county of Hawaii; or~~
- ~~(2) The county in which the mortgaged property or unit is located, if the mortgaged property or unit is located in the city and county of Honolulu or the county of Maui or Kauai.”]~~

SECTION 64. Section 667-27, Hawaii Revised Statutes, is amended to read as follows:

“§667-27 Public notice of public sale; contents; distribution; publication.

(a) The foreclosing mortgagee shall prepare the public notice of the public sale. The public notice shall state:

- (1) The date, time, and place of the public sale;
 - (2) The unpaid balance of the moneys owed to the mortgagee under the mortgage agreement;
 - (3) A description of the mortgaged property, including the address and the tax map key number of the mortgaged property;
 - (4) The name of the mortgagor and the borrower;
 - (5) The name of the foreclosing mortgagee;
 - (6) The name of any prior or junior creditors having a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23;
 - (7) The name, the address in the State, and the telephone number in the State of the person in the State conducting the public sale; and
 - (8) The terms and conditions of the public sale.
- (b) The public notice shall also contain wording substantially similar to

the following in all capital letters:

“THE DEFAULT UNDER THE MORTGAGE AGREEMENT MAY BE CURED NO LATER THAN THREE BUSINESS DAYS BEFORE THE DATE OF THE PUBLIC SALE OF THE MORTGAGED PROPERTY BY PAYING THE ENTIRE AMOUNT WHICH WOULD BE OWED TO THE FORECLOSING MORTGAGEE IF THE PAYMENTS UNDER THE MORTGAGE AGREEMENT HAD NOT BEEN ACCELERATED, PLUS THE FORECLOSING MORTGAGEE’S ATTORNEY’S FEES AND COSTS, AND ALL OTHER FEES AND COSTS INCURRED BY THE FORECLOSING MORTGAGEE RELATED TO THE DEFAULT, UNLESS OTHERWISE AGREED TO BETWEEN THE FORECLOSING MORTGAGEE AND THE BORROWER. THERE IS NO RIGHT TO CURE THE DEFAULT OR ANY RIGHT OF REDEMPTION AFTER THAT TIME. IF THE DEFAULT IS SO CURED, THE PUBLIC SALE SHALL BE CANCELED.”

(c) If the default is not cured as required by the notice of default and intention to foreclose, the foreclosing mortgagee shall have a copy of the public notice of the public sale of the mortgaged property:

- (1) Mailed or delivered to the mortgagor and the borrower at their respective last known addresses;
 - (2) Mailed or delivered to any prior or junior creditors having a recorded lien on the mortgaged property before the recordation of the notice of default and intention to foreclose under section 667-23;
 - (3) Mailed or delivered to the state director of taxation;
 - (4) Mailed or delivered to the director of finance of the county where the mortgaged property is located;
 - (5) Posted on the mortgaged property or on such other real property of which the mortgaged property is a part; and
 - (6) Mailed or delivered to any other person entitled to receive notice under section 667-5.5 or 667-21.5.
- (d) The foreclosing mortgagee shall have the public notice of the public

sale:

- (1) Printed in not less than seven-point font and published in the classified section of a newspaper ~~[of]~~ that is published at least weekly and having a general circulation in the [geographic-area] county in which the mortgaged property is located. [A person may apply to the circuit court for an order confirming a newspaper to be of

~~general circulation for purposes of this paragraph, which the court shall grant upon proof of compliance with this paragraph.] The public notice shall be published once each week for three consecutive weeks, constituting three publications. The public sale shall take place no sooner than fourteen days after the date of the publication of the third public notice advertisement; or~~

- (2) Not less than twenty-eight days before the date of the public sale, published on a state website at the discretion of the agency that maintains the website; provided that:
 - (A) If the mortgaged property is owned by an owner-occupant, the public notice shall be published on a website maintained by the department. The department shall publish the public notice pursuant to this subparagraph upon satisfaction of the filing requirements of section 667-76(b); and
 - (B) The public notice shall be published at least once in the format described in paragraph (1) at least fourteen days prior to the public sale.

~~[(e) As used in subsection (d):~~

~~“General circulation” refers to a newspaper that:~~

- ~~(1) Contains news of a general nature; and~~
- ~~(2) Is distributed within the geographic area where the mortgaged property is located:~~
 - ~~(A) At least weekly;~~
 - ~~(B) For a minimum of one year unless interrupted by strike, natural disaster, or act of war or terror; and~~
 - ~~(C) To a minimum of three per cent of the residents of the geographic area, as determined by the last decennial United States census and as verified by an independent audit.~~

~~“Geographic area” means:~~

- ~~(1) The real property tax zone of the mortgaged property, as shown on the real property tax maps kept by the real property tax assessment division of the county of Hawaii, if the mortgaged property is located in the county of Hawaii; or~~
- ~~(3) The county in which the mortgaged property is located, if the mortgaged property is located in the city and county of Honolulu or the county of Maui or Kauai.]”~~

PART VII

SECTION 65. In codifying the new sections added or amended by sections 2, 3, 62, and 63 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 66. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 67. This Act, except for section 667-O in section 3 of this Act, does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date. Section 667-O in section 3 of this Act shall apply to:

- (1) All pending judicial foreclosure actions filed by mortgagees for residential property prior to the effective date of this Act; and
- (2) All judicial foreclosure actions filed by mortgagees for residential property on or after the effective date of this Act.

SECTION 68. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 69. This Act shall take effect upon its approval; provided that:

- (1) On July 1, 2017:
 - (A) Section 667-O in section 3 of this Act shall be repealed; and
 - (B) Section 667-P in section 3 of this Act shall take effect;
- (2) Section 4 of this Act, amending section 454M-5, Hawaii Revised Statutes, shall take effect on July 1, 2012;
- (3) The website maintained by the department of commerce and consumer affairs for purposes of publishing the electronic public notices of public sale pursuant to section 667-27(d), as amended in section 20 of this Act, shall be operative no later than August 30, 2012;
- (4) Section 26 of this Act, amending section 667-41, Hawaii Revised Statutes, shall take effect on September 1, 2012; and
- (5) Part VI of this Act, amending sections 667-F, 667-R, and 667-27, Hawaii Revised Statutes, shall take effect two years after the effective date of this Act.

(Approved June 28, 2012.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

ACT 183

H.B. NO. 2375

A Bill for an Act Relating to the Mortgage Rescue Fraud Prevention Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 480E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§480E- Mortgage rescue fraud; consumer education. The office of consumer protection shall educate consumers about fraudulent activities that may be committed against homeowners who face property foreclosures, liens, or encumbrances, as appropriate.

§480E- Criminal penalties. Any person who violates section 480E-10 is guilty of a class C felony and, in addition to any other penalties, shall be fined \$10,000.”

SECTION 2. Section 480E-11, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“[§480E-11]—Violation;] Unfair or deceptive act or practice; penalties.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved June 28, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 184

H.B. NO. 1705

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that residents in certain rural areas in the State do not have access to public utility water services. The legislature also finds that in some of these unserved areas, private nonprofit companies, such as Napu'u Water, Inc., have been established for the sole purpose of supplying potable water to the community. Although these companies are federally tax-exempt under section 501(c)(12) of the Internal Revenue Code, they are still subject to the state income and general excise taxes. The legislature further finds that, in the interests of fairness and equity, nonprofit companies that are operated exclusively to supply potable water to communities that lack any access to public utility water services should receive the same tax treatment as water companies owned by a county or municipality.

The purpose of this Act is to exempt from the state income and general excise taxes, privately-owned nonprofit public water systems that supply potable water to residential communities that lack any access to public utility water services and are federally tax-exempt under section 501(c)(12) of the Internal Revenue Code.

SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

- (1) Subchapter A (sections 1 to 59A) (with respect to determination of tax liability), except section 1(h)(2) (relating to net capital gain reduced by the amount taken into account as investment income), except sections 2(a), 2(b), and 2(c) (with respect to the definition of “surviving spouse” and “head of household”), except section 41 (with respect to the credit for increasing research activities), except section 42 (with respect to low-income housing credit), except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property), and except section 48(d)(3), as amended, as of February 17, 2009 (with respect to the treatment of United States Department of Treasury grants

- made under section 1603 of the American Recovery and Reinvestment Tax Act of 2009). For treatment, see sections 235-110.91, 235-110.7, and 235-110.8;
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit);
 - (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits);
 - (4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b);
 - (5) Section 114 (with respect to extraterritorial income). For treatment, any transaction as specified in the transitional rule for 2005 and 2006 as specified in the American Jobs Creation Act of 2004 section 101(d) and any transaction that has occurred pursuant to a binding contract as specified in the American Jobs Creation Act of 2004 section 101(f) are inoperative;
 - (6) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);
 - (7) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);
 - (8) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1);
 - (9) Section 139C (with respect to COBRA premium assistance);
 - (10) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);
 - (11) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;
 - (12) Section 179B (with respect to expensing of capital costs incurred in complying with Environmental Protection Agency sulphur regulations);
 - (13) Section 181 (with respect to special rules for certain film and television productions);
 - (14) Section 196 (with respect to deduction for certain unused investment credits);
 - (15) Section 199 (with respect to the U.S. production activities deduction);
 - (16) Section 222 (with respect to qualified tuition and related expenses);
 - (17) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);
 - (18) Section 280C (with respect to certain expenses for which credits are allowable). For treatment, see section 235-110.91;
 - (19) Section 291 (with respect to special rules relating to corporate preference items);
 - (20) Section 367 (with respect to foreign corporations);
 - (21) Section 501(c)(12), (15), (16) (with respect to exempt organizations); except that section 501(c)(12) shall be operative for companies that provide potable water to residential communities that lack any access to public utility water services;
 - (22) Section 515 (with respect to taxes of foreign countries and possessions of the United States);
 - (23) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);

- (24) Subchapter H (sections 581 to 597) (with respect to banking institutions), except section 584 (with respect to common trust funds). For treatment, see chapter 241;
- (25) Section 642(a) and (b) (with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55;
- (26) Section 646 (with respect to tax treatment of electing Alaska Native settlement trusts);
- (27) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);
- (28) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
- (29) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
- (30) Section 853A (with respect to credits from tax credit bonds allowed to shareholders);
- (31) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, and 235-7(b), and 235-55;
- (32) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
- (33) Section 1055 (with respect to redeemable ground rents);
- (34) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);
- (35) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);
- (36) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations);
- (37) Subchapter R (sections 1352 to 1359) (with respect to election to determine corporate tax on certain international shipping activities using per ton rate);
- (38) Subchapter U (sections 1391 to 1397F) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E;
- (39) Subchapter W (sections 1400 to 1400C) (with respect to District of Columbia enterprise zone);
- (40) Section 1400O (with respect to education tax benefits);
- (41) Section 1400P (with respect to housing tax benefits);
- (42) Section 1400R (with respect to employment relief);
- (43) Section 1400T (with respect to special rules for mortgage revenue bonds);
- (44) Section 1400U-1 (with respect to allocation of recovery zone bonds);
- (45) Section 1400U-2 (with respect to recovery zone economic development bonds); and
- (46) Section 1400U-3 (with respect to recovery zone facility bonds)."

SECTION 3. Section 237-23, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) This chapter shall not apply to the following persons:

- (1) Public service companies as that term is defined in section 239-2, with respect to the gross income, either actual gross income or gross

- income estimated and adjusted, that is included in the measure of the tax imposed by chapter 239;
- (2) Public utilities owned and operated by the State or any county, or other political subdivision thereof;
 - (3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of the societies, orders, or associations, and to their dependents;
 - (4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended, as well as that of operating a prepaid legal services plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under part XVII of chapter 346;
 - (5) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare that shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
 - (6) Hospitals, infirmaries, and sanitarium;
 - ~~(7) Companies that provide potable water to residential communities that lack any access to public utility water services and are tax exempt under section 501(c)(12) of the Internal Revenue Code of 1986, as amended;~~
 - ~~(7)]~~ (8) Cooperative associations incorporated under chapter 421 or Code section 521 cooperatives which fully meet the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
 - (A) The exemption shall apply only to the gross income derived from activities that are pursuant to purposes and powers authorized by chapter 421, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
 - (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all those persons shall be so taxable; and
 - (C) As used in this paragraph, "section 521 cooperatives" mean associations that qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;
 - ~~(8)]~~ (9) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;
 - ~~(9)]~~ (10) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stock-

holder or individual; provided that the exemption shall apply only to the activities of those persons in the conduct of cemeteries and shall not apply to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of those persons; and

~~[(10)]~~ (11) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations.

(b) The exemptions enumerated in subsection (a)(3) to ~~[(6)]~~ (7) shall apply only:

(1) To those persons who shall have registered with the department of taxation by filing a written application for registration in such form as the department shall prescribe, shall have paid the registration fee of \$20, and shall have had the exemption allowed by the department or by a court or tribunal of competent jurisdiction upon appeal from any assessment resulting from disallowance of the exemption by the department;

(2) To activities from which no profit inures to the benefit of any private stockholder or individual, except for death or other benefits to the members of fraternal societies; and

(3) To the fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of such persons, or to the activities of ~~[such]~~ hospitals, infirmaries, ~~[and]~~ sanitaria ~~[as such]~~, and potable water companies, and not to any activity the primary purpose of which is to produce income even though the income is to be used for or in furtherance of the exempt activities of such persons.

(c) To obtain allowance of an exemption:

(1) A person under subsection (a)(3) to ~~[(6);]~~ (7), who has received or applied for recognition of tax exempt status under section 501(c)(3), (4), (6), ~~[(8)]~~ or (12) of the Internal Revenue Code of 1986, as amended, or who is a subordinate person of a person who has received a group exemption letter under section 501(c)(3), (4), (6), ~~[(8)]~~ or (12) of the Internal Revenue Code of 1986, as amended, shall register with the department by filing a statement attaching a copy of the exemption or application for recognition of exempt status and any particular facts that the department may require; and

(2) All other persons under subsection (a)(3) to ~~[(6)]~~ (7) shall file an application for exemption in the form of an affidavit or affidavits setting forth in general all facts affecting the right to the exemption and ~~[such]~~ any particular facts ~~[as]~~ that the department may require, to which shall be attached ~~[such]~~ any records, papers, and other information as the department may prescribe.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that sections 2 and 3 shall apply to taxable years beginning after December 31, 2011.

(Approved June 28, 2012.)

ACT 185

H.B. NO. 1695

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 231-36.8, Hawaii Revised Statutes, is amended to read as follows:

“§231-36.8 Erroneous claim for refund or credit. (a) If a claim for refund or credit with respect to tax is made for an excessive amount, the person making the claim shall be liable for a penalty in an amount equal to twenty per cent of the excessive amount; provided that there shall be no penalty assessed where the penalty calculation under this section results in an amount of less than \$400.

(b) It shall be a defense to the penalty under this section that the claim for refund or credit had a reasonable basis. A person claiming the reasonable basis defense shall have the burden of proof to demonstrate the reasonableness of the claim.

(c) This section shall be construed in accordance with regulations and judicial interpretations given to section 6676 of the Internal Revenue Code.

(d) For purposes of this section:

“Excessive amount” means the amount by which the amount of the claim for refund or credit for any taxable year exceeds the amount of the claim allowable for such taxable year.

“Reasonable basis” means a standard of care used in tax reporting that is significantly higher than not frivolous or not patently improper. A reasonable basis position will be more than arguable and based on at least one or more authorities of either state or federal tax administration. A position is considered to have a reasonable basis if a reasonable and well-informed analysis by a person knowledgeable in tax law would lead that person to conclude that the position has approximately a one-in-four, or greater, likelihood of being sustained on the merits. A reasonable basis includes innocent mistakes where the excessive amount is the result of inadvertence, mathematical error, or where otherwise defined as innocent by the director pursuant to a formal pronouncement issued without regard to chapter 91.

(e) This section shall not apply to any portion of an underpayment on which a penalty is imposed under section 231-36.6.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2011.

(Approved June 28, 2012.)

A Bill for an Act Relating to Physician Workforce Assessment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 304A-2171, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Moneys in the special fund shall be used to support the John A. Burns school of medicine’s activities related to physician workforce assessment and planning within Hawaii; provided that of the physician workforce assessment fees transferred and deposited into the special fund pursuant to section 453-8.8, no less than fifty per cent of the total amount of assessment fees deposited shall be used for purposes identified by the Hawaii medical education council to support physician workforce assessment and planning efforts, including the recruitment and retention of physicians, for rural and medically underserved areas of the State; provided further that expenditures from the special fund shall be limited to no more than ~~[\$150,000]~~ \$245,000 annually. This shall include but not be limited to maintaining accurate physician workforce assessment information and providing or updating personal and professional information, that shall be maintained in a secure database. The John A. Burns school of medicine may disclose information specific to any physician only with the express written consent of that physician.”

SECTION 2. Section 453-8.8, Hawaii Revised Statutes, is amended to read as follows:

~~“[§453-8.8]~~ Physician workforce assessment fee; license; physician workforce information. When a license is renewed, each physician or surgeon and each osteopathic physician or surgeon shall be assessed a fee of \$60 that shall be transferred and deposited into the John A. Burns school of medicine special fund established under section 304A-2171 to support ongoing assessment and planning of the physician workforce in Hawaii~~[-]~~, including ongoing assessment and planning, as well as the recruitment and retention of physicians, especially for the physician workforce serving rural and medically underserved areas of the State. Payment of the physician workforce assessment fee shall be required for license renewal.”

SECTION 3. Act 18, Special Session Laws of Hawaii 2009, is amended as follows:

1. By amending section 5 to read:

“SECTION 5. The John A. Burns school of medicine shall submit a report of findings and recommendations detailing its assessment of the physician workforce to the legislature, the state health planning and development agency, and the Hawaii medical board, no later than twenty days prior to the convening of the regular session of 2011 and each ~~[odd-numbered]~~ year thereafter. The report to the Hawaii medical board shall also include information on the expenditure of the fees collected pursuant to section ~~[453—,]~~ 453-8.8, Hawaii Revised Statutes, to produce a physician workforce plan for Hawaii.”

2. By amending section 9 to read:

“SECTION 9. This Act shall take effect on July 1, 2009; provided that sections 3 and 4 shall be repealed on June 30, ~~[2012;]~~ 2017.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2012; provided that section 1 shall be repealed on June 30, 2017, and section 304A-2171(c), Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 28, 2012.

(Approved June 28, 2012.)

ACT 187

S.B. NO. 596

A Bill for an Act Relating to Hawaii Health Corps.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that many residents of Hawaii are increasingly unable to obtain timely and appropriate health care due to shortages of primary health care providers in the State, including physicians, physician assistants, and nurse practitioners. These shortages threaten the health of Hawaii's residents and affect state health care costs. These shortages have pushed the federal government to designate a number of areas in the State, particularly rural areas, as medically underserved areas, health professional shortage areas, or as having medically underserved populations.

The legislature further finds that counties in the United States with robust primary health care systems have lower costs and improved patient outcomes. Recognizing this relationship, many states have implemented budget line item support for the primary care pipeline.

Family physicians and nurse practitioners are well suited to rural practice due to their broad scope of clinical skills across the life cycle, encompassing the inpatient, outpatient, nursing home, and home setting. In addition to providing acute, chronic, and preventive care, many family physicians and nurse practitioners provide maternity care, family planning, and mental health services. With this scope of practice, family physicians and nurse practitioners are well equipped to work in teams with other health professionals to develop fully functioning patient-centered medical homes.

The University of Hawaii John A. Burns school of medicine, in association with Wahiawa general hospital, conducts a fully accredited three-year family medicine residency program. This program has contributed over sixty family physicians who currently work throughout the State of Hawaii.

The legislature further finds that the increasingly high cost of a physician's and nurse practitioner's professional education requires physicians and nurse practitioners to seek out the higher incomes that allow them to repay their student loans. However, physician and nurse practitioner salaries in rural shortage areas are often lower than those in non-shortage areas.

Loan repayment programs have been successfully used in Hawaii to increase the number of educators serving in hard-to-fill teaching positions and can also be used to encourage and enable physicians, physician assistants, and nurse practitioners to provide care in shortage areas of the State.

The purpose of this Act is to establish the Hawaii health corps, under the University of Hawaii John A. Burns school of medicine, to provide loan repayment for physicians, physician assistants, and nurse practitioners who agree to work in a county having a shortage of physicians, physician assistants, and nurse practitioners, with priority given to a rural area of that particular county.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII HEALTH CORPS**

§ -1 Definitions. As used in this chapter, unless the context requires otherwise:

“Loan repayment” or “repayment of loan” means the payment of up to twenty per cent of a Hawaii health corps program participant’s health care training costs including but not limited to tuition not exceeding \$35,000 per year for a maximum of five years of repayment.

“Nurse practitioner” means a person licensed as an advanced practice registered nurse under chapter 457.

“Physician” means a person licensed to practice medicine and surgery, as required by section 453-2.

“Physician assistant” means a person licensed to practice medicine under the supervision of a physician or osteopathic physician, as required by section 453-5.3.

“Residency” means a physician or nurse practitioner participating in an accredited program of post graduate study.

§ -2 Hawaii health corps program established. The Hawaii health corps program is established to encourage physicians, physicians assistants, and nurse practitioners to serve in counties having a shortage of physicians, physician assistants, and nurse practitioners, with priority given to a rural area county. The Hawaii health corps program shall be administered by the University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene. In administering the program, the University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene shall:

- (1) Adopt rules and develop guidelines to administer the program;
- (2) Identify and designate areas of the counties where there is a shortage of physicians, physician assistants, and nurse practitioners;
- (3) Establish criteria for the selection by the University of Hawaii John A. Burns school of medicine of physicians, physician assistants, and nurse practitioners to participate in the Hawaii rural health care provider loan repayment program;
- (4) Define and determine compliance with the service commitments of the Hawaii rural health care provider loan repayment program;
- (5) Collect and manage reimbursements from participants who do not meet their service commitments under the Hawaii rural health care provider loan repayment program;
- (6) Publicize the program, particularly to maximize participation by individuals who live in areas of a county where there is a shortage of physicians, physician assistants, and nurse practitioners;
- (7) Solicit and accept grants and donations from public and private sources for the Hawaii rural health care provider loan repayment program, including maximizing the use of federal matching funds; and
- (8) Establish criteria and procedures for calling Hawaii health corps program participants into service during a civil defense or other emergency.

§ -3 Hawaii rural health care provider loan repayment program. (a)

There is created within the Hawaii health corps program, the Hawaii rural health care provider loan repayment program to be administered by the University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene in partnership with a lending financial institution whose operations are principally conducted in Hawaii. The Hawaii rural health care provider loan repayment program shall provide loan repayments to eligible physicians, physician assistants, and nurse practitioners who make the service commitment under subsection (b). The University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene shall make loan repayments directly to the financial institution under subsection (b) to offset the loan repayment for which the Hawaii rural health care provider loan repayment program recipient would otherwise be liable. Loan repayments shall commence upon the commencement of loan repayments by the Hawaii rural health care provider loan repayment program recipient to the lending financial institution. The University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene shall prioritize loan repayments in accordance with the greatest specialty shortages for the particular county.

(b) The Hawaii rural health care provider loan repayment program shall provide loan repayments on behalf of licensed physicians, physician assistants, and nurse practitioners who agree to serve for five consecutive years as a physician, physician assistant, or nurse practitioner in a county having a shortage of physicians, physician assistants, and nurse practitioners, with priority given to a rural area of that particular county; provided that eligible physicians, physician assistants, or nurse practitioners, as applicable, shall have graduated from a duly accredited medical school or nursing school within the United States; provided further that preference shall be given to graduates of the University of Hawaii John A. Burns school of medicine or the University of Hawaii at Manoa school of nursing and dental hygiene, as applicable.

(c) Eligible participants in the Hawaii rural health care provider loan program shall be determined by the University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene on a competitive basis and in accordance with subsection (b).

(d) If a Hawaii rural health care provider loan repayment program participant fails to satisfy the recipient's service commitment under subsection (b), the Hawaii rural health care provider loan repayment program participant shall be liable for the repayment of the outstanding balance of the loan to the lending financial institution under subsection (b). In addition, the University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene may seek reimbursement for any loan repayment made by the University of Hawaii John A. Burns school of medicine or the University of Hawaii at Manoa school of nursing and dental hygiene on behalf of the Hawaii rural health care provider loan repayment program participant.

(e) In accordance with chapter 103D, the University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene may enter into written contracts with collection agencies to collect delinquent reimbursements of loan repayments. All payments collected, exclusive of a collection agency's commissions, shall revert and be credited to the Hawaii health corps fund. A collection agency that enters into a written contract with the University of Hawaii John A. Burns school of medicine or the University of Hawaii at Manoa school of nursing and dental hygiene to collect delinquent reimbursements of loan repayments pursuant to this sec-

tion may collect a commission from the debtor in accordance with the terms of, and up to the amounts authorized in, the written contract.

§ -4 Hawaii health corps first responder service obligation. If a civil defense or other emergency, proclaimed under chapter 127 or 128 occurs, physicians, physician assistants, and nurse practitioners participating in the Hawaii health corps program may be ordered into service by the governor as first responders to serve in areas of the State and in a capacity determined by the director of health.

§ -5 Rules. The University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene shall adopt rules to administer this chapter. The rules shall be adopted pursuant to chapter 91, but shall be exempt from public notice and public hearing requirements.

§ -6 Hawaii health corps revolving fund. (a) There is established in the treasury of the State the Hawaii health corps revolving fund, which shall be administered by the University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene, and into which shall be deposited:

- (1) Any funds appropriated by the legislature for the Hawaii rural health care provider loan repayment program;
- (2) Gifts, donations, and grants from public agencies and private persons;
- (3) Reimbursements of loan repayments under the Hawaii rural health care provider loan repayment program;
- (4) Proceeds of the operations of the Hawaii health corps program; and
- (5) Interest earned or accrued on moneys deposited into the fund.

(b) The University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene may expend moneys from the fund for the purposes of this chapter, including the operational expenses of the Hawaii health corps program.”

SECTION 3. The University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene shall implement the Hawaii health corps program no later than June 30, 2013.

The deans of the University of Hawaii John A. Burns school of medicine and the University of Hawaii at Manoa school of nursing and dental hygiene shall report to the legislature on the status of the Hawaii health corps program no later than twenty days prior to the convening of each regular session of the legislature, beginning with the regular session of 2013.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 28, 2012.)

that: “SECTION 5. This Act shall take effect upon its approval; provided

- (1) The amendments made to this Act to:
 - (A) The definition of “power-generating facility” in section 243-1, Hawaii Revised Statutes; and
 - (B) Section 243-4(a), Hawaii Revised Statutes, shall be repealed on December 31, [2012,] 2015, and section 243-4(a), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and
- (2) The rate of tax for naphtha as provided for in section 243-4(a)(3), Hawaii Revised Statutes, shall be effective retroactively and apply to any imposition of the fuel tax on naphtha sold for use in a power-generating facility.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 28, 2012.)

ACT 189

S.B. NO. 2947

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 231-3.4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[[§231-3.4]]]~~ **Publication of reports.** (a) The department of taxation shall publish reports on the following:

- (1) Hawaii income patterns—individuals;
- (2) Hawaii income patterns—corporations, proprietorships, and partnerships; and
- (3) Tax credits.

~~(b)~~ The department shall make each of these reports available in both paper form and commonly accessible electronic forms ~~[for a reasonable fee]~~.

(c) The department of taxation shall report to the legislature no later than twenty days prior to the convening of each regular session; provided that on or before December 31, 2012, the department shall report to the legislature on:

- (1) The resources and information needed to complete the reports required under subsection (a)(3);
- (2) An identification of the best means of providing information in an electronic format in the future; and
- (3) Recommendations for additional information that may be required for inclusion in the reports as the department upgrades its tax computer systems and associated enterprise resource planning implementation.

~~[(b)] (d)~~ The department ~~[shall]~~ may explore and implement all reasonable methods of covering the costs of ~~[publication and]~~ distribution of the reports, including but not limited to:

- (1) Setting reasonable fees that will cover the costs of producing and distributing the reports in paper and electronic form; and
- (2) Negotiating licensing fees with commercial information providers for rights to carry the reports on-line or in other electronic storage methods."

SECTION 2. The department of taxation may establish three new permanent full-time equivalent (3.0 FTE) positions and one new temporary full-time equivalent (1.0 FTE) position to fulfill the publication requirements pursuant to section 231-3.4, Hawaii Revised Statutes.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$104,505 or so much thereof as may be necessary for fiscal year 2012-2013 for additional resources and staffing support for the department of taxation to complete the reports required under section 231-3.4, Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of taxation for the purposes of this Act.

PART II

SECTION 4. Section 231-7.5, Hawaii Revised Statutes, is amended to read as follows:

"[§231-7.5] Expedited appeals and dispute resolution program. (a) The department shall be authorized to implement an administrative appeals and dispute resolution program that shall expeditiously resolve all tax, penalty, interest, fine, assessment, and other such disputes between the department and the taxpayer or return preparer. The director or the director's designee, who shall report directly and be answerable solely to the director, shall serve as an independent appeals officer and shall be authorized to compromise, settle, or otherwise resolve any dispute on any basis, including hazards and costs of litigation, considering equally the position of the taxpayer and the department on an impartial basis. The independent appeals officer shall not be influenced by any department tax compliance initiatives and policies, or loss of revenue to the State. Decisions of the independent appeals officer shall be in writing stating the facts, analysis, and conclusions in support, which shall be provided to the taxpayer and return preparer. Persons who currently serve or have served in the previous five years as an auditor, audit supervisor or manager, collector, collection supervisor or manager, district manager or supervisor, or tax compliance administrator, shall not be eligible to be the director's designee.

(b) Notwithstanding any other law to the contrary, including tax appeal procedures set forth under chapter 232, a taxpayer shall be eligible to petition the department once for participation in the administrative appeals and dispute resolution program after issuance of a notice of proposed assessment; provided that if a taxpayer has filed a tax appeal with the tax appeal court or other court, the taxpayer shall first be required to obtain the approval of the director and permission from the respective court prior to petitioning the department for participation. The director shall have the right to deny a petition for cause.

(c) The department shall adopt procedures to carry out the purposes of this section, including procedures relating to ex parte communications between the director or the director's designee and other department personnel to ensure that such communications do not compromise or appear to compromise the independence of the administrative appeals and dispute resolution program.

(d) The director of taxation may appoint an administrative appeals officer as necessary to administer this section, and perform other duties as directed by the director. The administrative appeals officer shall be exempt from chapter 76 and may be a legal or accounting professional; provided that no individual appointed under this section shall render legal services reserved to the attorney general under chapter 28."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved June 28, 2012.)

ACT 190

H.B. NO. 2226

A Bill for an Act Relating to an Automated Victim Notification System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 353, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . AUTOMATED VICTIM INFORMATION AND NOTIFICATION SYSTEM

§353-A Definitions. For purposes of this part:

"Offender" means a person in the custody of the department of public safety or the Hawaii paroling authority but does not include juveniles under the jurisdiction of the family court.

"System" means the statewide automated victim information and notification system.

"Victim" means a person against whom a crime has been committed by the offender and includes, in homicide cases, surviving immediate family members.

§353-B System; requirements. (a) The department shall establish a statewide automated victim information and notification system to:

- (1) Automatically notify a registered victim or concerned member of the community, via the person's choice of telephone, text message, or electronic mail transmission when the offender who is in the custody of the department:
 - (A) Is transferred or assigned to another facility;
 - (B) Is transferred to the custody of another agency outside the State;
 - (C) Is released on temporary leave or for other reasons;
 - (D) Is discharged; or
 - (E) Has escaped;
- (2) Automatically notify a registered victim or concerned member of the community via the person's choice of telephone, text message, or electronic mail transmission when:
 - (A) The offender has an upcoming parole hearing; or
 - (B) There is a change in the offender's parole status, including a change in the offender's supervision status;

- (3) Permit a victim or concerned member of the community to receive the most recent status report for the offender in the custody of the department by calling the system on a toll-free telephone number, as well as by accessing the system via a public website;
 - (4) Provide all victims or concerned members of the community calling the system with the option to receive live operator assistance with the system on a twenty-four-hours per day, three-hundred-sixty-five-days per year basis; and
 - (5) Permit a victim or a concerned member of the community to register or update the person's registration information for the system by calling a toll-free telephone number or accessing a public website.
- (b) The prosecuting agency shall notify the victim of the victim's right to register in the system. It shall be the responsibility of the victim to register with the system.

§353-C Satisfaction of victims' rights to notification. Participation in the system and making offender data available on a timely basis to the system shall be deemed to satisfy the obligations of:

- (1) The department to notify the victim of changes in the offender's custodial status pursuant to section 801D-4(a)(7); and
- (2) The police and prosecuting attorney to notify the victim of the offender's release from custody pursuant to section 801D-4(a)(1).

§353-D Compliance by department; no cause of action. The department shall ensure that the offender information contained within the system is updated on a regular basis sufficient to timely notify a victim or a concerned member of the community of the offender's release, discharge, or escape. However, failure of the system to provide notice to the victim or a concerned member of the community shall not establish a separate cause of action by the victim or a concerned member of the community against the State, any county, or any state or county agency, officer, or employee.

§353-E Law enforcement cooperation. The attorney general, and the chief of police and prosecuting attorney of each county, shall cooperate with the department in establishing and maintaining the system.

§353-F Automated victim information and notification system special fund; authorization of payment. (a) There is established a special fund to be known as the automated victim information and notification system special fund, to be administered by the department. Interest and investment earnings credited to the assets of the fund shall become part of the fund. Any remaining balance in the fund at the end of any fiscal year shall be carried over to the next fiscal year.

(b) Any item purchased by an in-state or out-of-state inmate from a correctional facility commissary shall be subject to a four per cent surcharge on the item's price. The proceeds from the surcharge shall be deposited into the automated victim information and notification system special fund.

(c) All proceeds or revenues that are derived from any commission that is realized pursuant to a telephone service agreement executed by the department for the provision of telephone services for inmates shall be deposited into the automated victim information and notification system special fund.

(d) Moneys received pursuant to subsections (b) and (c) shall be used for the development and operating expenses, including salaries and benefits of positions as authorized by the legislature, of the system.

(e) The sum total of all moneys expended for development and operating expenses, including salaries and benefits of positions as authorized by the legislature, shall not exceed the special fund ceiling related to the fund established by the legislature; provided that the total moneys expended for these purposes shall not exceed \$600,000 in any one fiscal year.

(f) Federal funds shall not be transferred to, or deposited into, the automated victim information and notification system special fund.

§353-G Automated victim information and notification system governance committee. (a) There is established within the department of public safety, an automated victim information and notification system governance committee. The members of the governance committee shall be appointed by the director of public safety from a list submitted by the governance committee; provided that the initial members of the committee shall be selected by the director from a list of members provided by the statewide automated victim information and notification governance committee currently serving in that capacity under a grant from the federal Bureau of Justice Assistance establishing the victim notification system.

(b) The terms of the members shall be for four years and shall commence on July 1 and expire on June 30; provided that the governance committee may elect to reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. No person shall be appointed consecutively to more than two terms on the governance committee; provided that membership shall not exceed eight consecutive years. Any member whose term has expired and who is not disqualified for membership under this subsection may continue in office as a holdover member until a successor is nominated and appointed; provided that a holdover member shall not hold office beyond the end of the second regular legislative session following the expiration of the member's term of office.

(c) A vacancy occurring in the membership of the governance committee during a term shall be filled for the unexpired term thereof as provided in subsection (a). The director of public safety may remove or suspend for cause any member after due notice and public hearing.

(d) The governance committee members shall include:

(1) A victim;

(2) One representative from a victim assistance program in each county;

(3) One representative from the police department of each county; and

(4) One representative from each of the following:

(A) Mothers Against Drunk Driving shall be requested to serve;

(B) The Hawaii State Coalition Against Domestic Violence shall be requested to serve;

(C) Sex Abuse Treatment Center shall be requested to serve;

(D) Crime victim compensation commission;

(E) The Hawaii paroling authority;

(F) The judiciary;

(G) The crime prevention and justice assistance division of the department of the attorney general; and

(H) The information technology section of the department.

The committee members shall elect a member who shall serve as the chairperson.

(e) The governance committee may advise the department on the following issues:

(1) The implementation and operation of the system;

- (2) The establishment of performance measures;
- (3) Specifications and configuration parameters for the operation of the system;
- (4) Management of the system; and
- (5) Policies and procedures governing the use of the system, including policies to safeguard the safety, confidentiality, and autonomy of victims.
- (f) Meetings of the governance committee shall be held on a quarterly basis during the system's first year of implementation and no less than twice a year thereafter.
- (g) The members of the governance committee shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.
- (h) Members of the governance committee acting in good faith and within the scope of their duties under this chapter shall be immune from any civil or criminal liability arising from these acts, except where the member's conduct would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct."

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Funds of the employees' retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
- (14) Tourism special fund established under section 201B-11;
- (15) Universal service fund established under section 269-42;
- (16) Emergency and budget reserve fund under section 328L-3;
- (17) Public schools special fees and charges fund under section 302A-1130;
- (18) Sport fish special fund under section 187A-9.5;
- (19) Glass advance disposal fee established by section 342G-82;
- (20) Center for nursing special fund under section 304A-2163;
- (21) Passenger facility charge special fund established by section 261-5.5;
- (22) Court interpreting services revolving fund under section 607-1.5;
- (23) Hawaii cancer research special fund;

- (24) Community health centers special fund;
- (25) Emergency medical services special fund;
- (26) Rental motor vehicle customer facility charge special fund established under section 261-5.6; ~~and~~
- (27) Shared services technology special fund under section 27-43[.]; and
- (28) Automated victim information and notification system special fund established under section 353-F.

shall deduct five per cent of all receipts of all special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 3. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
 - (2) Special out-of-school time instructional program fund under section 302A-1310;
 - (3) School cafeteria special funds of the department of education;
 - (4) Special funds of the University of Hawaii;
 - (5) State educational facilities improvement special fund;
 - (6) Special funds established by section 206E-6;
 - (7) Aloha Tower fund created by section 206J-17;
 - (8) Funds of the employees’ retirement system created by section 88-109;
 - (9) Unemployment compensation fund established under section 383-121;
 - (10) Hawaii hurricane relief fund established under section 431P-2;
 - (11) Convention center enterprise special fund established under section 201B-8;
 - (12) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
 - (13) Tourism special fund established under section 201B-11;
 - (14) Universal service fund established under section 269-42;
 - (15) Emergency and budget reserve fund under section 328L-3;
 - (16) Public schools special fees and charges fund under section 302A-1130;
 - (17) Sport fish special fund under section 187A-9.5;
 - (18) Center for nursing special fund under section 304A-2163;
 - (19) Passenger facility charge special fund established by section 261-5.5;
 - (20) Court interpreting services revolving fund under section 607-1.5;
 - (21) Hawaii cancer research special fund;
 - (22) Community health centers special fund;
 - (23) Emergency medical services special fund;
 - (24) Rental motor vehicle customer facility charge special fund established under section 261-5.6; ~~and~~
 - (25) Shared services technology special fund under section 27-43[.]; and

(26) Automated victim information and notification system special fund established under section 353-F.

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 4. The department of public safety shall continue to operate the statewide automated victim information and notification system pursuant to the funding structure under which it operated on June 30, 2012, which may include the use of federal funds, until such time as the automated victim information and notification system special fund has accumulated sufficient moneys to carry out the purposes of this Act.

SECTION 5. There is appropriated out of the automated victim information and notification system special fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2012-2013 to operate the automated victim information and notification system established by this Act; provided that funds shall be made available upon the accumulation of sufficient moneys in the automated victim information and notification system special fund to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 6. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2012; provided that the amendments to sections 36-27(a) and 36-30(a), Hawaii Revised Statutes, in sections 2 and 3 of this Act shall not be repealed when sections 36-27 and 36-30, Hawaii Revised Statutes, are reenacted on June 30, 2015, pursuant to section 34 of Act 79, Session Laws of Hawaii 2009.

(Approved June 28, 2012.)

ACT 191

S.B. NO. 2419

A Bill for an Act Relating to Personal Information.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 487J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§487J- Unlawful use of Hawaii identification card or driver’s license.

(a) No business may scan the machine-readable zone of an individual’s Hawaii identification card or driver’s license, except for the following purposes:

- (1) To verify authenticity of the identification card or driver’s license or to verify the identity of the individual if the individual pays for goods or services with a method other than cash, returns an item, or requests a refund or an exchange;

- (2) To verify the individual's age when providing age-restricted goods or services to the individual if there is a reasonable doubt of the individual having reached eighteen years of age or older;
 - (3) To prevent fraud or other criminal activity if the individual returns an item or requests a refund or an exchange and the business uses a fraud prevention service company or system. Information collected by scanning an individual's Hawaii identification card or driver's license pursuant to this subsection shall be limited to the following information from the individual:
 - (A) Name;
 - (B) Address;
 - (C) Date of birth; and
 - (D) Driver's license number or identification card number;
 - (4) To establish or maintain a contractual relationship. Information collected by scanning the individual's Hawaii identification card or driver's license pursuant to this subsection shall be limited to the following information from the individual:
 - (A) Name;
 - (B) Address;
 - (C) Date of birth; and
 - (D) Driver's license number or identification card number;
 - (5) To record, retain, or transmit information as required by state or federal law;
 - (6) To transmit information to a consumer reporting agency, financial institution, or debt collector to be used as permitted by the federal Fair Credit Reporting Act, Gramm-Leach-Bliley Act, or the Fair Debt Collection Practices Act; and
 - (7) To record, retain, or transmit information by a covered entity governed by the medical privacy and security rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996.
- (b) No business shall retain any information obtained pursuant to subsection (a), except as permitted in subsections (a)(3) through (7).
- (c) No business shall sell or disseminate to a third party any information obtained under this section for any purpose, including marketing, advertising, or promotional activities, except as permitted in subsections (a)(3) through (7).
- (d) A business covered under this section shall make reasonable efforts, through systems testing and other means, to ensure that the requirements of this chapter are met.
- (e) Any waiver of a provision of this section is contrary to public policy and is void and unenforceable.
- (f) For purposes of this section:
- "Consumer reporting agency" shall have the same meaning as in the federal Fair Credit Reporting Act, title 15 United States Code section 1681a(f).
- "Covered entity" shall have the same meaning as in the security rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996.
- "Debt collector" shall have the same meaning as in the federal Fair Debt Collection Practices Act, title 15 United States Code section 1692a.
- "Financial institution" shall have the same meaning as in the federal Gramm-Leach-Bliley Act, title 15 United States Code section 6809."

SECTION 2. Section 487J-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Scan” or “scanning” means to access the machine-readable zone of an individual’s Hawaii identification card or driver’s license with an electronic device capable of deciphering, in an electronically readable format, information electronically encoded on an individual’s Hawaii identification card or driver’s license.”

SECTION 3. Chapter 487J, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“CHAPTER 487J
~~[SOCIAL SECURITY NUMBER]~~ PERSONAL INFORMATION
PROTECTION”**

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved June 28, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 192

H.B. NO. 2295

A Bill for an Act Relating to Cyberbullying.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 708-893, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of use of a computer in the commission of a separate crime if the person:

- (a) Intentionally uses a computer to obtain control over the property of the victim to commit theft in the first or second degree; or
- (b) Knowingly uses a computer to identify, select, solicit, persuade, coerce, entice, induce, [ø] procure, pursue, surveil, contact, harass, annoy, or alarm the victim or intended victim of the following offenses:
 - (i) Section 707-726, relating to custodial interference in the first degree;
 - (ii) Section 707-727, relating to custodial interference in the second degree;
 - (iii) Section 707-731, relating to sexual assault in the second degree;
 - (iv) Section 707-732, relating to sexual assault in the third degree;

- (v) Section 707-733, relating to sexual assault in the fourth degree;
- (vi) Section 707-751, relating to promoting child abuse in the second degree; ~~[or]~~
- (vii) Section 711-1106, relating to harassment;
- (viii) Section 711-1106.5, relating to harassment by stalking; or
- ~~[(vii)]~~ (ix) Section 712-1215, relating to promoting pornography for minors."

SECTION 2. The provisions of this Act shall be liberally construed to give effect to the purposes thereof.

SECTION 3. Nothing in this Act is intended to interfere with the First Amendment rights of free speech and expression of any person affected.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.
(Approved June 28, 2012.)

ACT 193

S.B. NO. 2001

A Bill for an Act Relating to the Public Land Trust.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 226-18, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) To further achieve the energy objectives, it shall be the policy of this State to:

- (1) Support research and development as well as promote the use of renewable energy sources;
- (2) Ensure that the combination of energy supplies and energy-saving systems is sufficient to support the demands of growth;
- (3) Base decisions of least-cost supply-side and demand-side energy resource options on a comparison of their total costs and benefits when a least-cost is determined by a reasonably comprehensive, quantitative, and qualitative accounting of their long-term, direct and indirect economic, environmental, social, cultural, and public health costs and benefits;
- (4) Promote all cost-effective conservation of power and fuel supplies through measures, including:

- (A) Development of cost-effective demand-side management programs;
- (B) Education; and
- (C) Adoption of energy-efficient practices and technologies;
- (5) Ensure, to the extent that new supply-side resources are needed, that the development or expansion of energy systems uses the least-cost energy supply option and maximizes efficient technologies;
- (6) Support research, development, demonstration, and use of energy efficiency, load management, and other demand-side management programs, practices, and technologies;
- (7) Promote alternate fuels and transportation energy efficiency;
- (8) Support actions that reduce, avoid, or sequester greenhouse gases in utility, transportation, and industrial sector applications;
- (9) Support actions that reduce, avoid, or sequester Hawaii's greenhouse gas emissions through agriculture and forestry initiatives; ~~and~~
- (10) Provide priority handling and processing for all state and county permits required for renewable energy projects[-]; and
- (11) Promote the development of indigenous geothermal energy resources that are located on public trust land as an affordable and reliable source of firm power for Hawaii."

SECTION 2. There shall be consultation and public input from the Native Hawaiian community and the general public when developing projects with public land trust lands.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved June 29, 2012.)

ACT 194

H.B. NO. 2871

A Bill for an Act Relating to the West Maui Ocean Recreation Management Area.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that increased recreational and commercial activities in Hawaii's nearshore waters have led to safety concerns, and in some cases, tragic results. The legislature also finds that given the popularity of ocean activities in Kaanapali on the island of Maui, the department of land and natural resources should establish a west Maui ocean recreation management area advisory committee comprised of users of the ocean to work with the department on issues arising relating to the area, particularly the waters of Kaanapali.

SECTION 2. (a) Not later than September 1, 2012, the department of land and natural resources shall establish a temporary west Maui ocean recreation management area advisory committee that shall advise the department of land and natural resources on issues related to the uses and maintenance of state waters within the west Maui ocean recreation management area, particularly within the waters adjacent to Kaanapali on the island of Maui.

(b) The temporary advisory committee shall consist of five members of the west Maui community appointed by the chairperson of the board of land and natural resources without regard to section 26-34, Hawaii Revised Statutes, as follows:

- (1) One swimming enthusiast;
- (2) One paddling enthusiast;
- (3) One surfing enthusiast;
- (4) One commercial boating enthusiast; and
- (5) One fishing enthusiast.

No member shall be made subject to chapter 84, Hawaii Revised Statutes, solely because of that member's participation as a member of the temporary advisory committee. The temporary advisory committee created by this section shall be terminated on June 30, 2015.

SECTION 3. The department of land and natural resources shall submit an annual report to the legislature, no later than twenty days prior to the convening of each regular session beginning with the 2013 legislative session and until the expiration of the temporary west Maui ocean recreation management area advisory committee, regarding the findings and recommendations, including any proposed legislation, of the temporary west Maui ocean recreation management area advisory committee.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved June 29, 2012.)

ACT 195

S.B. NO. 2933

A Bill for an Act Relating to Ocean Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that increased recreational and commercial activities in Hawaii's nearshore waters have led to safety concerns and, in some cases, tragic results. According to the department of land and natural resources, there were at least four accidents involving swimmers and divers being struck by boats in 2011. In December 2011, a man died after being struck by a boat in waters off of Hanakao beach park on the island of Maui.

Many nearshore areas statewide are popular attractions for multiple ocean activities. The legislature finds that Kamaole beach and the waters of Kaanapali on the island of Maui are two such areas. The amount of growth on Maui has resulted in an overabundance of ocean and beach visitors, and the legislature finds that there is a compelling need to provide safe and suitable areas for residents and visitors to enjoy the water.

The legislature finds that adopting and enforcing stricter rules and regulations that protect ocean users and installing safety features such as swim zone buoys to clearly delineate areas reserved for differing uses will ensure greater ocean safety in highly populated areas of the State.

The legislature also finds that given the popularity of ocean activities in Kaanapali, the department of land and natural resources should establish a west Maui ocean recreation management area advisory committee to work on issues relating to the area, particularly the waters of Kaanapali.

The purpose of this Act is to improve ocean safety by:

- (1) Requiring the department of land and natural resources to adopt rules imposing stricter regulations for the safety of ocean users;
- (2) Appropriating funds for swim zone buoys at Kamaole beach; and
- (3) Establishing the temporary west Maui ocean recreation management area advisory committee comprised of users of the ocean to work with the department of land and natural resources on issues relating to the area, particularly the waters of Kaanapali.

SECTION 2. Chapter 200, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§200- Safety of ocean users; rules. The department shall adopt rules to promote greater safety of ocean users in the State’s nearshore waters. The rules shall include but not be limited to the creation of safe zones for free divers and swimmers and stricter enforcement of boating regulations around swim zone buoys.

§200- Alternate access to state boating facilities; rules. The department shall adopt rules to allow vessels holding a valid ocean recreation management area commercial use permit to use a state small boat harbor or boat launching ramp when unsafe wind and sea conditions would prevent safe access to the shoreline through a designated ingress or egress zone. The vessel operator or master shall give the department prior notice of the presence or threat of such conditions and shall be subject to local direction and control as necessary to avoid conflict with other users of the facility. Use of a state boating facility in accordance with this section shall not affect the permittee’s right to use such boating facilities in the absence of such conditions in order to provision a vessel as permitted by law.”

SECTION 3. The legislature finds that eight swim zone buoys are needed at the following coordinates to increase the safety of ocean users:

- (1) Buoy 1: N 20° 42.623, W 156° 26.836;
- (2) Buoy 2: N 20° 42.736, W 156° 26.863;
- (3) Buoy 3: N 20° 42.836, W 156° 26.888;
- (4) Buoy 4: N 20° 42.984, W 156° 26.912;
- (5) Buoy 5: N 20° 43.120, W 156° 26.934;
- (6) Buoy 6: N 20° 43.237, W 156° 26.962;
- (7) Buoy 7: N 20° 43.410, W 156° 27.019; and
- (8) Buoy 8: N 20° 43.498, W 156° 27.043.

The department of land and natural resources shall install eight swim zone buoys at the coordinates indicated in this section.

SECTION 4. There is appropriated out of the ocean-based recreation fund the sum of \$20,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the installation of eight swim zone buoys at Kamaole beach at the coordinates specified in section 3 of this Act for the purpose of increasing the safety of ocean users.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 5. The department of land and natural resources shall relocate the buoys in the waters off Kaanapali beach between Mala wharf and Black Rock on the island of Maui to waters beyond the lanes or areas used by canoe paddlers.

SECTION 6. The department of land and natural resources shall report to the legislature on the status of rulemaking required in the two new sections of the Hawaii Revised Statutes in section 2 of this Act and any other measures taken to promote the safety of ocean and beach users in the State's nearshore waters, no later than twenty days prior to the convening of the 2013 regular session.

SECTION 7. (a) No later than September 1, 2012, the department of land and natural resources shall establish a temporary west Maui ocean recreation management area advisory committee that shall advise the department of land and natural resources on issues related to the uses and maintenance of state waters within the west Maui ocean recreation management area, particularly within the waters adjacent to Kaanapali on the island of Maui.

(b) The temporary advisory committee shall consist of five members of the west Maui community appointed by the chairperson of the board of land and natural resources without regard to section 26-34, Hawaii Revised Statutes, as follows:

- (1) One swimming enthusiast;
- (2) One paddling enthusiast;
- (3) One surfing enthusiast;
- (4) One commercial boating enthusiast; and
- (5) One fishing enthusiast.

No member shall be made subject to chapter 84, Hawaii Revised Statutes, solely because of that member's participation as a member of the temporary advisory committee. The temporary advisory committee created by this section shall be terminated on June 30, 2015.

SECTION 8. The department of land and natural resources shall submit a report to the legislature, no later than twenty days prior to the convening of the regular session of 2013, regarding the findings and recommendations, including any proposed legislation, of the temporary west Maui ocean recreation management area advisory committee.

SECTION 9. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 2012.

(Approved June 29, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 196

H.B. NO. 1879

A Bill for an Act Relating to the One Call Center.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Act 72, Session Laws of Hawaii 2009, amended the definition of "excavation" to exempt certain activities of pest control operators licensed under chapter 460J, Hawaii Revised Statutes, from prohibitions of certain actions and reporting and other requirements by the one call center because pest control operators do not present the risks to under-

ground facilities that the one call center was designed to address. Although the exemption is scheduled to expire on June 30, 2012, the legislature finds that the public utilities commission should conduct an investigation on the risks of residential pest control application before this exemption is made permanent.

The purpose of this Act is to:

- (1) Clarify and extend the exemption for certain activities of pest control operators from the definition of "excavation" under the one call center law;
- (2) Require exempt pest control operators to attend training provided or approved by the Hawaii one call center; and
- (3) Require the public utilities commission to conduct an investigation on the risks of residential pest control application and report to the legislature no later than twenty days prior to the convening of the regular session of 2014.

SECTION 2. Section 269E-2, Hawaii Revised Statutes, is amended by amending the definition of "excavation" to read as follows:

"Excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives, including but not limited to the following: grading, trenching, digging, ditching, boring, drilling, auguring, tunneling, scraping cable or pipe plowing and driving, demolition, and dredging. "Excavation" shall not include any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives as part of:

- (1) Improving an existing principal place of residence for one or two families, or improving or constructing an appurtenance thereto, on a parcel of land two acres or less in size, zoned for residential use, which is used or occupied or is developed, devoted, intended, or permitted to be used or occupied as a principal place of residence for one or two families; or
- (2) Any pest control activity involving excavation regulated under chapter 460J[-] that is not performed under contract with any county or state agency."

SECTION 3. (a) The public utilities commission shall require any operator exempt from requirements of the one call center to participate in training seminars provided or approved by the one call center for education on excavation requirements and best practices to minimize risks.

(b) The public utilities commission shall conduct an investigation assessing the risk of residential pest control application. The commission shall submit to the legislature a report of its findings and recommendations no later than twenty days prior to the convening of the regular session of 2014.

SECTION 4. Act 72, Session Laws of Hawaii 2009, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect on June 29, 2009; provided that section 2 of this Act shall be repealed on ~~[June 30, 2012]~~ June 30, 2015, and section 269E-2, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 28, 2009."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 29, 2012.

(Approved June 29, 2012.)

ACT 197

H.B. NO. 2273

A Bill for an Act Relating to Concussions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that concussions or mild traumatic brain injuries sustained by children and adolescents frequently occur in a variety of sports and recreational activities, including football, soccer, bicycling, and skateboarding. In October 2011, the Centers for Disease Control and Prevention reported that the number of traumatic brain injury-related emergency department visits in this country by persons nineteen years old or younger that were related to sports and recreational activities increased from 153,375 in 2001 to 248,418 in 2009. In this State, the department of education's athletic health care trainers program also noted an increase in the number of reported concussions, from two hundred thirteen in the 2007-2008 school year to four hundred forty-six in the 2010-2011 school year.

The marked increase in national and state concussion statistics may be attributed, at least in part, to an increased awareness of the dangers of concussions by the people involved in sports activities. The department of education began its concussion management program in 2011 to educate coaches, parents, and athletic trainers, and provide care for students. The legislature finds, however, that a statewide concussion educational program is necessary to ensure that public and private high school students, school personnel, and parents are provided with consistent and up-to-date information on concussions and management of symptoms and injuries relating to a concussion.

The purpose of this Act is to require the department of education and the Hawaii High School Athletic Association to develop a concussion educational program for students and student athletes who are fourteen to eighteen years old. The program shall include:

- (1) Education of students, student athletes, parents, sports officials, school faculty and staff, and school administrators of the signs and symptoms of a concussion and what to do if someone demonstrates any of these signs or symptoms;
- (2) An annual educational session for coaches and athletic trainers about the signs and symptoms of a concussion;
- (3) The need for the mandatory removal of a student from the athletic activity that the student is participating in if the student demonstrates any signs or symptoms of a concussion; and
- (4) The need for a concussed student's physician to evaluate the student and determine whether the student is able to return to a particular athletic activity.

SECTION 2. As used in this Act, the following definitions apply:

"Coach" means a paid or volunteer coach.

"Concussion" means a pathophysiological process affecting the brain, caused by traumatic biomechanical forces.

"Licensed health care provider" means an advanced practice registered nurse, certified or registered athletic trainer, neuropsychologist, physician assistant, physician, or osteopathic physician trained in the management of sports concussions.

SECTION 3. The department of education and the Hawaii High School Athletic Association shall develop a concussion educational program that shall include:

- (1) Educating students, parents, sports officials, school faculty, coaches, staff, and school administrators about the signs and symptoms of a concussion and the procedures to follow if a person displays any of the signs or symptoms of a concussion;
- (2) Annual educational sessions about the signs and symptoms of a concussion for coaches and athletic trainers;
- (3) The need for the mandatory removal of a student from the athletic activity that the student is participating in, if the student demonstrates any signs and symptoms of a concussion;
- (4) The need for a concussed student's licensed health care provider to evaluate the student and determine whether the student is able to return to a particular athletic activity; and
- (5) The monitoring of a student's return to physical activity by the school's certified athletic trainer, if an athletic trainer is employed by the school. This return to activity plan is to be based upon peer-review scientific evidence, such as that from the National Athletic Trainer Association or Centers for Disease Control and Prevention.

SECTION 4. Educational guidelines for development of a high school concussion awareness program. There shall be an educational program developed for every public and private school that is a member of the Hawaii High School Athletic Association on how to develop a school's concussion awareness plan. Every program shall require:

- (1) Annual concussion awareness training for coaches, administrators, faculty, staff, and sports officials, including:
 - (A) The signs and symptoms of a concussion;
 - (B) The need to obtain proper medical attention for a person suspected of having a concussion; and
 - (C) Information on the nature and risk of concussions, including the danger of continuing to play after sustaining a concussion and the proper method of allowing a student who has sustained a concussion to return to activity;
- (2) Annual concussion awareness education for parents and students who participate in a school's athletic team or programs or both. The parents and students shall sign a concussion information sheet that they have attended and received this concussion awareness education;
- (3) Immediate removal from a game, practice, or other activity of any student who exhibits signs, symptoms, or behaviors consistent with a concussion, such as loss of consciousness, headache, dizziness, confusion, or balance problems. The student shall not return to the activity until cleared to do so by a licensed health care provider; and
- (4) The student to obtain written clearance from a licensed health care provider prior to returning to academics and athletics, which:
 - (A) States that the student is capable of resuming participation in a particular sport;
 - (B) May require the student to follow a plan designed to aid the student to recover and resume participation in school and athletic activities that:
 - (i) Includes, as appropriate, periods of cognitive and physical rest while symptoms of a concussion persist; and

- (ii) Reintroduces cognitive and physical demands on the student on a progressive basis to prevent the reemergence or worsening of symptoms of a concussion; and
- (C) Requires that the student's return to physical activity be monitored by the school's certified athletic trainer, if an athletic trainer is employed by the school.

SECTION 5. The department of education shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2013 on the development and implementation of the concussion educational program.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 3, 2012.)

ACT 198

S.B. NO. 155

A Bill for an Act Relating to Athletic Trainers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii is one of only three states that does not currently regulate the practice of athletic training. The legislature further finds that the continued lack of regulation creates the risk that individuals who have lost or are unable to obtain licensure in another state will move to Hawaii to practice, thereby putting the public in danger and degrading the standards of the profession.

The legislature finds that there is a pressing and immediate need to regulate the profession of athletic training to protect the public health, safety, and welfare. This need is particularly important since athletic trainers often work with elementary and secondary school-aged children. Regulation of athletic trainers will ensure that participants in athletic activities receive prompt, specialized emergency care as well as appropriate follow-up treatment and rehabilitation and meet appropriate criteria before being returned to play. Regulation will require that athletic trainers demonstrate minimum competency in the field, as is required for other health care professionals. Finally, regulation will provide a means for members of the public, other members of the profession, and the Board of Certification, Inc., to assist in maintaining quality standards by reporting ethics violations or disciplinary action to the State's regulatory agency.

The legislature finds that the requirements of section 26H-6, Hawaii Revised Statutes, were met by the passage of Act 108, Session Laws of Hawaii 2010, requesting that the auditor perform a sunrise analysis of the regulatory measures contained in this Act. Therefore, the legislature finds that there is no procedural impediment to regulating the currently unregulated industry of athletic trainers through passage of this Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
ATHLETIC TRAINERS**

§ -1 Title. This chapter shall be known as the Athletic Trainer Registration Act.

§ -2 Definitions. As used in this chapter:

“Athlete” means a person who prepares for or participates in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, including interscholastic, intercollegiate, intramural, semiprofessional, or professional sports activities.

“Athletic injury” means an injury that affects the preparation for or participation in organized sports or sports-related activities, or amateur or recreational sports involving athletic competition, including interscholastic, intercollegiate, intramural, semiprofessional, or professional sports activities.

“Athletic trainer” means an individual, whether or not registered under this chapter, who engages in the practice of athletic training or represents oneself to be an athletic trainer.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Practice of athletic training” refers to the application by an athletic trainer, whether or not registered under this chapter and without regard to certification by any certifying body, of principles and methods to:

- (1) Prevent athletic injuries;
- (2) Recognize, evaluate, and assess athletic injuries and conditions;
- (3) Provide immediate care of athletic injuries, including common emergency medical care;
- (4) Treat, rehabilitate, and recondition athletic injuries;
- (5) Administer athletic training services and organization; and
- (6) Educate athletes;

provided that the practice of athletic training does not include provision of medical services as defined in section 453-1, occupational therapy services as defined in section 457G-1, or physical therapy or physical therapy services as defined in section 461J-1.

“Treating physician” means a physician or osteopathic physician licensed under chapter 453 who, within the licensee’s scope of practice and individual competency, is responsible for the athletic training services provided by an athletic trainer and oversees the practice of athletic training by an athletic trainer.

§ -3 Athletic trainer program. There is established an athletic trainer program within the department to be administered by the director.

§ -4 Registration required. No person shall engage in the practice of athletic training or represent, advertise, or announce oneself, either publicly or privately, as an athletic trainer, nor use in connection with the person’s name or place of business the words “registered athletic trainer”, “athletic trainer”, “ATC”, or any other words, letters, abbreviations, or insignia indicating or implying that the person is an athletic trainer unless the person meets the qualifications established by this chapter and has registered with the department.

§ -5 Exemptions. This chapter is not intended to restrict the practice of other licensed healthcare providers practicing within their own recognized scopes of practice and shall not apply to:

- (1) An individual who possesses a valid license issued under chapter 453, 457G, or 461J who, when acting within the scope of practice allowable under the individual's license, performs the same or similar functions as an individual registered pursuant to this chapter;
- (2) Students in an educational program for athletic trainers who participate in activities conducted as part of the educational program under the supervision and guidance of a registered athletic trainer registered under this chapter;
- (3) An individual serving in the armed forces of the United States, the United States Public Health Service, the Department of Veterans Affairs, or any other federal agency who engages in activities regulated under this chapter as a part of the individual's employment;
- (4) An individual who is invited to conduct a lecture, clinic, or demonstration regarding the practice of athletic training by a school, professional association, professional society, or other similar entity approved by the department by rule pursuant to chapter 91; provided that the individual does not establish a place of business or regularly engage in the practice of athletic training within the State;
- (5) An individual who possesses a valid license, registration, or certification from another jurisdiction who accompanies an athlete or team of athletes into this State for a temporary period; provided that the individual shall only attend to the needs of that athlete or team of athletes and those persons who travel with that athletic group or team in a capacity other than as a spectator;
- (6) An individual who possesses a valid license, registration, or certification from another jurisdiction who is invited to engage in the practice of athletic training under the supervision and control of a sponsoring entity for a limited time and solely for a special event; or
- (7) An individual who is an athletic trainer and a patient to himself or herself or gratuitous athletic training by a friend or family member who does not represent himself or herself to be an athletic trainer.

Nothing in this chapter shall be construed to limit or prohibit the administration of routine assistance or first aid by a person who is not a registered athletic trainer for injuries or illnesses sustained at an athletic event or program.

§ -6 Registration requirements. (a) Commencing January 1, 2013, athletic trainers shall:

- (1) Register with the department by providing the athletic trainer's name, business address, a current, active, and unencumbered certification from the Board of Certification, Inc., including the certification number, and information on any complaints filed against the athletic trainer with the Board of Certification, Inc., or with any state agency that regulates athletic trainers, including the status and disposition of all complaints;
 - (2) Have completed the educational and certification requirements of the Board of Certification, Inc.;
 - (3) Renew the athletic trainer's registration every three years by providing the information required by paragraph (1); and
 - (4) Notify the department of any changes in registration information within thirty days of the change.
- (b) The department shall maintain a current list of the names and business addresses of athletic trainers registered under subsection (a).

(c) Records of a registrant's certification from the Board of Certification, Inc., shall be public records.

§ -7 Duties of treating physician. A treating physician shall provide direction to an athletic trainer by verbal order when in the presence of the athletic trainer or by written order or written athletic training service plans or protocols when a treating physician is not present with the athletic trainer.

§ -8 Requirements to maintain registration. (a) An athletic trainer shall have and maintain current and active status certification from the Board of Certification, Inc., as a condition of registration. Failure, refusal, or neglect of any registrant to maintain in full force and effect, a current and active status certification shall cause the automatic forfeiture of the registration of the athletic trainer, effective as of the date of the change of the registrant's certification status.

(b) The department shall not restore the forfeited license until satisfactory proof of the active status of the certification is submitted to the department. The department may assess a fee not to exceed \$1,000 or restrict or place conditions on the registration as a condition of a restoration of a forfeited registration.

(c) The registrant may, within sixty days after receipt of the notification of the forfeiture, request an administrative hearing to review the forfeiture pursuant to chapter 91.

§ -9 Powers and duties of the director. In addition to any other powers and duties authorized by law, the director shall have the powers and duties to:

- (1) Adopt, amend, and repeal rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) Issue and renew registrations pursuant to this chapter and deny or refuse to renew registrations for failure to comply with this chapter;
- (3) Suspend or revoke any registration for any violation of this chapter, chapter 436B, or for any violation of rules adopted by the director pursuant to this chapter;
- (4) Establish fees; and
- (5) Administer, coordinate, and enforce this chapter.

§ -10 Fees; disposition. Application fees paid pursuant to this chapter shall not be refundable. Pursuant to section 26-9(1), the director shall establish registration, renewal, restoration, and other fees and penalties relating to the administration of this chapter. Fees and penalties assessed pursuant to this chapter shall be used to defray costs incurred by the department in implementing this chapter.

§ -11 Renewal of registration; fees. Registrations shall be renewed, upon the payment of a renewal fee, triennially not earlier than ninety days before June 30. Failure to renew a registration shall result in a forfeiture of the registration. Registrations that have been forfeited may be restored within one year of the expiration date upon payment of renewal and restoration fees. Failure to restore a registration within one year of the date of its expiration shall result in the automatic termination of the registration and the person may be required to reapply for registration as a new applicant. All renewal and restoration fees shall be determined by the director.

§ -12 Grounds for denial of registration; revocation and suspension of registration. In addition to any other acts or conditions provided by law, the director may deny or refuse to renew, revoke, suspend, restrict, fine, reprimand, censure, condition, or place the registration of any athletic trainer on probation when the athletic trainer:

- (1) Fails to meet the requirements for registration as provided in this chapter;
- (2) Has a registration or license or certification as an athletic trainer conditioned, suspended, revoked, or denied, or has been refused renewal of registration or license or certification as an athletic trainer;
- (3) Makes a materially false, misleading, deceptive, or fraudulent representation or material omission in the application for registration, including any renewal application;
- (4) Fails to satisfy a civil fine or penalty arising out of any administrative or enforcement action for violation of any state's athletic trainer laws or rules;
- (5) Has a license or registration revoked, suspended or otherwise disciplined by any state or federal agency for any reason that is provided by the applicable laws or rules or by this section;
- (6) Engages in the practice of athletic training while impaired by alcohol or drugs;
- (7) Engages in professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of athletic training;
- (8) Engages in conduct or a practice contrary to the recognized standards of ethics and professional responsibility as adopted by the National Athletic Trainers Association or the Board of Certification, Inc.;
- (9) Has been convicted or pleaded nolo contendere to a crime directly related to the qualifications, functions, or duties of the practice of athletic training;
- (10) Fails to report in writing to the director any disciplinary action taken against the registrant or applicant in another jurisdiction, including the Board of Certification, Inc., within thirty days of the disciplinary action; provided, however, that the registrant actually knows of the disciplinary action; and
- (11) Violates this chapter, chapter 436B, or any rule or order of the director.

§ -13 Registration indicates permission to engage in the practice of athletic training. A current registration granted under this chapter shall mean that the registered person has met requirements that include minimum practice standards to provide protection to the public and is permitted to use the title of athletic trainer and to engage in the practice of athletic training, subject to any applicable registration restrictions or conditions. In the granting of permission to engage in the practice of athletic training, and consistent with the intent of chapter 436B, the definition of "license" under section 436B-2 is inclusive of a registration issued under this chapter; therefore, an athletic trainer who is registered under this chapter shall be regarded as an athletic trainer who holds a license to practice the profession of athletic training.

§ -14 Civil penalties. Any person who violates any provision of this chapter or the rules of the department adopted pursuant to this chapter shall be

fined not more than \$1,000 and each day's violation or failure to comply shall be deemed a separate offense.

Unless otherwise expressly provided, the remedies or penalties provided in this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

§ -15 Rules. The director may adopt rules pursuant to chapter 91, including rules to establish fees or fines as may be necessary, to effectuate the purpose and to enforce the requirements of this chapter."

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

"§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs. (a) Any professional or vocational regulatory program enacted after January 1, 1994, and listed in this section shall be repealed as specified in this section. The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

(b) Chapter 466D (respiratory therapists) shall be repealed on June 30, 2016.

(c) Chapter (athletic trainers) shall be repealed on June 30, 2018."

SECTION 4. The department of commerce and consumer affairs may employ necessary personnel without regard to chapter 76, Hawaii Revised Statutes, to assist with and prepare for the implementation and continuing functions of chapter , Hawaii Revised Statutes, established pursuant to section 2 of this Act.

SECTION 5. Upon the issuance of a new registration and at each registration renewal period, each athletic trainer shall pay, in addition to the fee established pursuant to section -11, Hawaii Revised Statutes, a surcharge of \$100, which shall be maintained in a separate account within the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes. At the end of each quarter, the moneys contained in the separate account established pursuant to this section shall be transferred to the compliance resolution fund until the total transferred amounts equals the amount appropriated in section 6 of this Act. Thereafter, no surcharge shall be assessed, and any funds in excess of the amount appropriated in section 6 of this Act shall be deposited in the compliance resolution fund.

SECTION 6. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$40,000 or so much thereof as may be necessary for fiscal year 2012-2013 to implement the registration of athletic trainers as required by this Act.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 7. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2012; provided that section 2 shall take effect on January 1, 2013.

(Approved July 3, 2012.)

ACT 199

S.B. NO. 2435

A Bill for an Act Relating to Information Access.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that thousands of Hawaii residents experience disabilities such as visual impairments, dyslexia, and physical impairments that prevent them from directly accessing conventional print media. Many printed materials are available through governmental and nonprofit agencies in accessible formats such as braille, large print, or audio recording. However, the legislature finds that it is generally not practical to provide time-sensitive information such as a local daily newspaper in these specialized formats. The legislature also finds that even in a media environment where information is frequently available in multiple formats that are portable and widely accessible, telephone-based audible information access remains an important service for many individuals.

The purpose of this Act is to appropriate funds to maintain a telephone-based audible information access service.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$80,000 or so much thereof as may be necessary for fiscal year 2012-2013 to maintain a telephone-based audible information access service.

The sum appropriated shall be expended by the vocational rehabilitation and services for the blind division of the department of human services for the purposes of this Act; provided that the appropriation authorized under this Act shall be expended on a contract for services with the Hawaii affiliate of a national organization that:

- (1) Has affiliates in all fifty states; and
- (2) Provides electronic services that enables blind, visually-impaired, or print-disabled persons to access newspapers, magazines, and television listings twenty-four hours a day, seven days a week, by means of a touch-tone telephone, the Internet, or by downloading the electronic information to a digital talking book player or MP3 playing device.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)

ACT 200

H.B. NO. 2415

A Bill for an Act Relating to Medicaid.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that a significant portion of the population of Hawaii receives federal or state benefits for disabling conditions. Current state programs and policies, including state-designed medicaid waiver programs, create disincentives for individuals with disabilities to become employed, maintain employment, or further their employment goals.

The legislature also finds that it is advantageous to the State's economic development and in the best interest of Hawaii's citizens with disabilities to have

programs and policies that support employment. National studies have shown that medicaid recipients who work cost approximately thirty per cent less than those who do not work. Since 2005, Hawaii has been the recipient of a federal Centers for Medicare and Medicaid Services grant for the development of a medicaid infrastructure program to design and implement a buy-in program for individuals with disabilities who are employed and purchase medicaid coverage authorized under the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170). Besides the Ticket to Work and Work Incentives Improvement Act of 1999, other potential federal options for the creation of a buy-in program include the 1997 Balanced Budget Act and a waiver pursuant to section 1115 of title 42 United States Code, the Social Security Act.

The legislature further finds that there are forty-five states with a medicaid buy-in program for working individuals with disabilities. A medicaid buy-in program in Hawaii could generate up to \$300,000 in the first year of the program's implementation and a total of \$2,500,000 over the first five years.

The purpose of this Act is to identify and remove barriers to employment for individuals with disabilities by establishing a joint legislative task force to assist the department of human services in exploring the development and possible implementation of a medicaid buy-in program for working individuals with disabilities.

SECTION 2. (a) There is established a joint legislative task force to assist in exploring the development and possible implementation of a medicaid buy-in program for working individuals with disabilities.

(b) The chairperson of the senate committee on human services and the chairperson of the house of representatives committee on human services shall co-chair the joint legislative task force.

(c) The task force shall include representatives from the disability community, including but not limited to the following:

- (1) The department of human services, med-QUEST division;
- (2) The department of human services, vocational rehabilitation and services for the blind division, services for the blind branch (ho'opono);
- (3) Each of the QUEST expanded access plans;
- (4) The department of health, developmental disabilities division;
- (5) The department of health, adult mental health division;
- (6) The department of health, disability and communication access board;
- (7) The department of labor and industrial relations, workforce development council;
- (8) The state rehabilitation council;
- (9) The state council on developmental disabilities;
- (10) The University of Hawaii, center on disability studies;
- (11) Hawaii Waiver Providers Association;
- (12) One or more mental health clubhouses;
- (13) The Hawaii Centers for Independent Living;
- (14) The Hawaii Disability Rights Center;
- (15) The National Federation of the Blind, Hawaii Chapter;
- (16) The Hawaii Association of the Blind;
- (17) The Aloha State Association of the Deaf;
- (18) Hawaii Families as Allies, Hawaii Youth Helping Youth;
- (19) Aloha Independent Living Hawaii;
- (20) Consumer Family and Youth Alliance; and

(21) One or more representatives from each of the counties of Hawaii, Kauai, and Maui.

(d) The task force shall explore the development and possible implementation of a medicaid buy-in program based on Hawaii's current medicaid income and asset limits, and subject to approval to the federal Centers for Medicare and Medicaid Services. The medicaid buy-in program shall be for working individuals with disabilities and shall ensure the provision of health care services to qualified individuals who are employed, as demonstrated by proof of income in the form of pay stubs, tax returns, or other official documentation, and have disabilities, as defined by the department of human services.

(e) The task force shall submit a final report of its findings, program recommendations, and proposed legislation, if any, to the legislature no later than twenty days prior to the convening of the 2013 regular session. The legislative reference bureau shall assist the task force in drafting the report and any proposed legislation to implement the task force's recommendations; provided that the task force shall submit a draft of the report and any proposed legislation to the bureau no later than November 1, 2012.

(f) The members of the task force shall serve without compensation and shall receive no reimbursement for expenses.

(g) The members of the task force shall not be considered employees for the purposes of chapter 84, Hawaii Revised Statutes, based solely upon their participation in the task force.

(h) The task force shall be dissolved on June 30, 2013.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 3, 2012.)

ACT 201

H.B. NO. 2374

A Bill for an Act Relating to the Office of Language Access.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to improve access to government services and programs for limited English proficient individuals by transferring the office of language access, along with all of the functions and duties of this office, from the department of labor and industrial relations to the department of health.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER OFFICE OF LANGUAGE ACCESS

§ -1 **General purpose; purpose of the office of language access.** Many individuals living in Hawaii read, write, speak, and understand English. There are many individuals, however, who are limited English proficient. Language for limited English proficient persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by state-funded programs and activities.

The purpose of this chapter is to affirmatively address, on account of national origin, the language access needs of limited English proficient persons. It is the intent of the legislature that these services be guided by Executive Order No. 13166 and succeeding provisions of federal law, regulation, or guidance.

The purpose of the office of language access is to address the language access needs of limited English proficient persons and ensure meaningful access to services, programs, and activities offered by the executive, legislative, and judicial branches of state government, including departments, offices, commissions, boards, or other agencies, and all covered entities, for limited English proficient persons.

§ -2 Definitions. As used in this chapter, unless a different meaning clearly appears from the context:

“Access” or “participate” means to be informed of, participate in, and benefit from the services, programs, and activities offered by the State and covered entities.

“Covered entity” means a person or organization receiving state financial assistance, including grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to the person or organization for the purpose of rendering services to the public. It shall not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.

“Executive director” means the executive director of the office of language access.

“Language” means human speech or the expression of ideas by written characters and includes systems used by nations, people, or other distinct communities.

“Limited English proficient person” means an individual who, on account of national origin, does not speak English as the person’s primary language and self identifies as having a limited ability to read, write, speak, or understand the English language.

“Oral language services” means the free provision of oral information necessary to enable limited English proficient persons to access or participate in services, programs, or activities of a state agency or covered entity.

“Purchase-of-service contract” means any and all types of formal written agreements, regardless of what they may be called, between the State and any person, to purchase or otherwise acquire any service for the purpose of rendering services to the public.

“State” or “state agency” means the executive, legislative, or judicial branches of state government, including departments, offices, commissions, boards, or other agencies within the executive, legislative, or judicial branches.

“Vital documents” means printed documents that provide important information necessary to access or participate in services, programs, and activities of a state agency or covered entity, including but not limited to applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services.

“Written language services” means the free provision of written information necessary to enable limited English proficient persons to access or participate in services, programs, or activities of a state agency or covered entity.

§ -3 Oral and written language services. (a) Each state agency and all covered entities shall take reasonable steps to ensure meaningful access to ser-

vices, programs, and activities by limited English proficient persons, which will be determined by a totality of circumstances, including the following factors:

- (1) The number or proportion of limited English proficient persons served or encountered in the eligible service population;
- (2) The frequency with which limited English proficient persons come in contact with the services, programs, or activities;
- (3) The nature and importance of the services, programs, or activities; and
- (4) The resources available to the State or covered entity and the costs.

(b) Subject to subsection (a), each state agency and covered entity shall provide competent, timely oral language services to limited English proficient persons who seek to access services, programs, or activities.

(c) Subject to subsection (a), each state agency and covered entity shall provide written translations of vital documents to limited English proficient persons who seek to access services, programs, or activities, as follows:

- (1) Written translations of vital documents for each eligible limited English proficient group that constitutes five per cent or one thousand, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered; or
- (2) If there are fewer than fifty persons in a limited English proficient group that reaches the five per cent threshold in paragraph (1), written notice in the primary language to the limited English proficient language group of the right to receive competent oral interpretation of those written materials, free of cost.

(d) To the extent that the State requires additional personnel to provide language services based on the determination set forth in this section, the State shall hire qualified personnel who are bilingual to fill existing, budgeted vacant public contact positions.

§ -4 Additional obligations. (a) Each state agency and covered entity shall establish a plan for language access.

(b) Each state agency's plan for language access shall be established in consultation with the executive director and the state agency's coordinator for language access. State agencies receiving federal financial assistance that did not file an initial language access plan pursuant to former section 371-34(b) by July 1, 2007, shall file an initial language access plan with the executive director no later than July 1, 2013, and every two years thereafter. All other state agencies that did not file a language access plan pursuant to former section 371-34(b) by July 1, 2008, shall file a language access plan with the executive director no later than July 1, 2014, and every two years thereafter. Agencies that filed initial language access plans pursuant to former section 371-34(b) by July 1, 2007, and July 1, 2008, shall continue to file their plans with the executive director every two years thereafter.

(c) Each state agency shall designate a language access coordinator who shall establish and implement the plan for language access in consultation with the executive director and the language access advisory council.

§ -5 Public meetings and public hearings. (a) State agencies to which this chapter applies shall not be required to translate meeting notices, agendas, or minutes.

(b) Subject to section -3, oral language services for public meetings or public hearings held by the legislature shall be provided if requested at least forty-eight hours in advance of the meeting or hearing. When the notice of any public meeting or public hearing is posted less than forty-eight hours in advance

of the meeting or hearing, oral language services shall be provided if requested at least twenty-four hours in advance of the meeting or hearing.

§ -6 Office of language access; established. (a) There is established within the department of health, for administrative purposes only, the office of language access. The head of the office shall be known as the executive director of the office of language access. The executive director shall be appointed by the governor without regard to chapter 76. The executive director shall:

- (1) Provide oversight, central coordination, and technical assistance to state agencies in their implementation of language access requirements under this chapter or under any other law, regulation, or guidance;
- (2) Provide technical assistance to covered entities in their implementation of this chapter;
- (3) Review and monitor each state agency's language access plan for compliance with this chapter;
- (4) Where reasonable access is not provided, endeavor to eliminate the barrier using informal methods such as conference, conciliation, mediation, or persuasion. Where the language access barrier cannot be eliminated by informal methods, the executive director shall submit a written report with the executive director's opinion and recommendation to the state agency or the covered entity. The executive director may request the state agency or the covered entity to notify the executive director, within a specified time, of any action taken on the executive director's recommendation;
- (5) Consult with language access coordinators, the language access advisory council, and state department directors or their equivalent;
- (6) Subject to section -3, create, distribute to the State, and make available to covered entities multilingual signage in the more frequently encountered languages in the State, and other languages as needed, informing individuals of their right to free oral language services and inviting them to identify themselves as persons needing services; and
- (7) Adopt rules pursuant to chapter 91 to address the language needs of limited English proficient persons.

§ -7 Language access advisory council. (a) There is established the language access advisory council, which shall be placed within the department of health for administrative purposes only. The council shall consist of the following members to be appointed by the governor:

- (1) One representative from the state government;
- (2) One representative from a covered entity;
- (3) One bilingual worker who is or has been employed by a state-funded immigrant service agency or program;
- (4) One representative of an advocacy organization that provides services to limited English proficient persons;
- (5) One member from the limited English proficient population who has an interest in the provision of oral language services;
- (6) One representative from an accredited institution of higher learning who provides professional training in interpretation and translation;
- (7) One representative of a Hawaiian language advocacy organization;
- (8) One representative of a professional interpreter's organization;
- (9) One representative of a bilingual referral service or program;

- (10) One representative residing in the county of Hawaii who has shown interest in language access;
- (11) One representative residing in the county of Kauai who has shown interest in language access;
- (12) One representative residing in the county of Maui who has shown interest in language access;
- (13) One representative residing in the city and county of Honolulu who has shown interest in language access;
- (14) One member-at-large;
- (15) The executive director of the Hawaii civil rights commission or authorized representative, as an ex-officio member;
- (16) One representative from the disability and communication access board, as an ex-officio member; and
- (17) The executive director, as an ex-officio member.

(b) Members shall be appointed in accordance with section 26-34. The terms of the members shall be for four years. The council shall select one of its members to serve as chair. No member of the council shall receive any compensation for council services, but shall be allowed necessary expenses for travel, board, and lodging incurred in the performance of council duties.

(c) The language access advisory council shall serve in an advisory capacity to the executive director, providing input on:

- (1) Implementation and compliance with this chapter;
- (2) The quality of oral and written language services provided under this chapter; and
- (3) The adequacy of a state agency or covered entity's dissemination and training of its employees likely to have contact with limited English proficient persons, its policies and procedures for language services, its competency in working effectively with in-person and telephone interpreters, and its understanding of the dynamics of interpretation between clients, providers, and interpreters."

SECTION 3. Part II of chapter 371, Hawaii Revised Statutes, is repealed.

SECTION 4. All rights, powers, functions, and duties of the department of labor and industrial relations relating to the office of language access are transferred to the department of health.

SECTION 5. All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

All employees who occupy civil service positions and whose functions are transferred to the department of health by this Act shall retain their permanent or temporary civil service status. Employees shall be transferred without loss of salary, seniority, retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act; provided that the employees possess the minimum qualifications and public employment requirements for the class or position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any employee who, prior to this Act, is exempt from civil service and is transferred as a consequence of this Act may continue to retain the employee's

exempt status, but shall not be appointed to a civil service position because of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, any vacation and sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act; provided that the employees meet legal and public employment requirements for the position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable employment and compensation laws. The director of health may prescribe the duties and qualifications of the exempt employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes.

SECTION 6. All council members serving on the language access advisory council on the day prior to the effective date of this Act shall continue as members of the council and their terms shall be unaffected by this Act.

SECTION 7. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of labor and industrial relations, its agencies, divisions, or offices relating to the office of language access as determined by both the department of labor and industrial relations and the office of language access, which is transferred to the department of health shall be transferred with the functions to which they relate.

SECTION 8. All rules, policies, procedures, guidelines, and other material adopted or developed by the office of language access to implement provisions of part II of chapter 371, Hawaii Revised Statutes, that are made applicable to the office of language access established by this Act, shall remain in full force and effect until amended or repealed by the office of language access established by this Act pursuant to chapter 91, Hawaii Revised Statutes.

SECTION 9. All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the office of language access transferred or placed for administrative purposes within the department of health shall remain in full force and effect.

SECTION 10. All relocation cost or expenses associated with transferring the office of language access to the department of health shall be borne by the appropriations allocation to the office of language access or the department of health with no liabilities or liens arising from such relocation activity accruing to the department of labor and industrial relations.

SECTION 11. All privileges and benefits as provided by the department of labor and industrial relations, including parking, that are currently enjoyed by the office of language access shall be forfeited and returned to the providing department upon transfer of the office of language access to the department of health.

SECTION 12. There shall be a transition period to facilitate the transfer of the office of language access from the department of labor and industrial relations to the department of health. The year following July 1, 2012, shall serve as a transition period, in which the state agencies affected by this Act shall assist the executive director in implementing the transfer under this Act. Once the transfer is completed, the department of health shall provide public notice

that the transfer is completed in a printed publication or electronic format that is accessible statewide.

SECTION 13. The provisions of this Act are to be liberally construed to effectuate its purpose.

SECTION 14. All acts passed by the legislature during this regular session of 2012, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 15. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)

ACT 202

S.B. NO. 2737

A Bill for an Act Relating to Public Meetings.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 92-2, Hawaii Revised Statutes, is amended to read as follows:

“§92-2 Definitions. As used in this part:

[(1)] “Board” means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and to take official actions.

[(2)] “Chance meeting” means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

“Interactive conference technology” means any form of audio or audio and visual conference technology, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.

[(3)] “Meeting” means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.”

SECTION 2. Section 92-3.5, Hawaii Revised Statutes, is amended to read as follows:

“§92-3.5 Meeting by ~~[videconferenees;]~~ interactive conference technology; notice; quorum. (a) A board may hold a meeting by ~~[videconferenees;]~~ interactive conference technology; provided that the ~~[videconferenece system]~~ interactive conference technology used by the board ~~[shall allow both audio and visual]~~ allows interaction ~~[between]~~ among all members of the board participating in the meeting and ~~[the]~~ all members of the public attending the meeting, ~~[at any videconferenece location. The]~~ and the notice required by section 92-7 ~~shall specify~~ identifies all of the locations at which¹ ~~where~~ participating board members will be physically present ~~[during a videconferenece meeting. The notice~~

shall also specify that the public may attend the meeting at any of the specified locations.] and indicates that members of the public may join board members at any of the identified locations.

(b) Any board member participating in a meeting by [videoconference] interactive conference technology shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.

(c) A meeting held by [videoconference] interactive conference technology shall be terminated [if, after the meeting convenes, both the] when audio [and video] communication cannot be maintained with all locations where the meeting by interactive conference technology is being held, even if a quorum of the board is physically present in one location[; provided that a meeting may be continued by audio communication alone, if:

- (1) ~~All visual aids required by, or brought to the meeting by board members or members of the public have already been provided to all meeting participants at all videoconference locations where the meeting is held; or~~
- (2) ~~Participants are able to readily transmit visual aids by some other means (e.g., fax copies), to all other meeting participants at all other videoconference locations where the meeting is held. If copies of visual aids are not available to all meeting participants at all videoconference locations where the meeting is held, those agenda items related to the visual aids shall be deferred until the next meeting; and~~
- (3) ~~No more than fifteen minutes shall elapse in implementing the requirements listed in paragraph (2)]. If copies of visual aids required by, or~~

brought to the meeting by board members or members of the public, are not available to all meeting participants, at all locations where audio-only interactive conference technology is being used, within fifteen minutes after audio-only communication is used, those agenda items for which visual aids are not available for all participants at all meeting locations cannot be acted upon at the meeting.

(d) Notwithstanding the other provisions of this section to the contrary, a board member with a disability that limits or impairs the member's ability to physically attend the meeting may participate in a board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)

Note

1. Should be bracketed.

ACT 203

H.B. NO. 2004

A Bill for an Act Relating to Transportation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that persons have engaged in defrauding tourists by purporting to pick them up in vehicles at popular Waikiki tourist venues and taking them to various tourist sightseeing locations or activities, or transporting them to other business locations. Typically a tourist is picked up shortly ahead of scheduled pickups by a bona fide taxi or tour operator. The tourist at times pays up to twice the amount of travel fare and is sometimes promised refunds that are never received. To make matters worse, some tourists are never picked up for the return trip and are left stranded without transportation back to their lodging accommodation.

The legislature further finds that this type of unscrupulous activity by unconscionable people who would prey on tourists casts a bad image on Hawaii and may lead to a downturn in the economy. The legislature also finds that unscrupulous and deceptive activities are conducted by drivers who are not properly certified or licensed and drive vehicles that typically fail to meet the public utilities commission's requirements and other requirements.

The purpose of this Act is to address this unscrupulous activity by modifying the relevant state of mind regarding the unlawful operation of motor carriers from "knowingly and wilfully" to "intentionally, knowingly, or recklessly".

SECTION 2. Section 271-27, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Any person intentionally, knowingly, or [and wilfully] recklessly violating any provision of this chapter, or any rule, requirement, or order thereunder, or any term or condition of any certificate or permit for which a penalty is not otherwise provided, shall be guilty of a misdemeanor. In addition, any shipper or consignee located in this State, or any officer, employee, agent, or representative thereof, who intentionally, knowingly, or [and wilfully] recklessly engages the services of any person violating any provision of this chapter, or any rule, requirement, or order, or any term or condition of any certificate or permit for which a penalty is not otherwise provided, shall be guilty of a misdemeanor.

(b) Any person, whether carrier, shipper, or consignee, or any officer, employee, agent, or representative thereof, who intentionally, knowingly, or recklessly offers, grants, or gives, or solicits, accepts, or receives any rebate, concession, or discrimination in violation of any provisions of this chapter, or who by means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, intentionally, knowingly, or [and wilfully] recklessly assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who intentionally, knowingly, or [and wilfully] recklessly by any such means or otherwise fraudulently seeks to evade or defeat regulation as in this chapter provided for motor carriers, shall be deemed guilty of a misdemeanor."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

ACT 204

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)

ACT 204

H.B. NO. 2751

A Bill for an Act Relating to Offenses Against Public Administration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 710, Hawaii Revised Statutes, is amended by adding a new section to part VI be appropriately designated and to read as follows:

“§710- Disrespect of a house of the legislature. (1) A person who is not a member of either house of the legislature commits the offense of disrespect of a house of the legislature if, while the person is present at a legislative session of either house or at a hearing of any committee of either house, the person creates a breach of peace or disturbance with intent to interrupt the proceeding.

(2) Whenever there is probable cause to believe that a person has violated subsection (1), the person shall be subject to arrest and removal from the presence of the legislature or either house or any committee of a house, by the sergeant-at-arms of the affected house or by any other law enforcement officer of the State, as directed by the sergeant-at-arms.

(3) Disrespect of a house of the legislature is a petty misdemeanor.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 205

S.B. NO. 223

A Bill for an Act Relating to Domestic Abuse Orders.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 709-906, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was physical abuse or harm inflicted by one person upon a family or house-

hold member, regardless of whether the physical abuse or harm occurred in the officer's presence:

- (a) The police officer may make reasonable inquiry of the family or household member upon whom the officer believes physical abuse or harm has been inflicted and other witnesses as there may be;
- (b) Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one person upon a family or household member, the police officer lawfully ~~may~~ shall order the person to leave the premises for a period of separation of twenty-four hours, during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects;
- (c) Where the police officer makes the finding referred to in paragraph (b) and the incident occurs after 12:00 p.m. on any Friday, or on any Saturday, Sunday, or legal holiday, the order to leave the premises and to initiate no further contact shall commence immediately and be in full force, but the twenty-four hour period shall be enlarged and extended until 4:30 p.m. on the first day following the weekend or legal holiday;
- (d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person;
- (e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and
- (f) The police officer ~~may~~ shall seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 3, 2012.)

ACT 206

H.B. NO. 238

A Bill for an Act Relating to Temporary Restraining Orders.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 586-4, Hawaii Revised Statutes, is amended by amending subsections (e) and (f) to read as follows:

“(e) When a temporary restraining order is granted and the respondent or person to be restrained knows of the order, a knowing or intentional violation of the restraining order is a misdemeanor. A person convicted under this section shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall sentence a person convicted under this section as follows:

- (1) [For] Except as provided in paragraph (2), for a first conviction for a violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of forty-eight hours and be fined not less than \$150 nor more than \$500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; [and]
- (2) For a first conviction for a violation of the temporary restraining order, if the person has a prior conviction for any of the following felonies:
 - (A) Section 707-701 relating to murder in the first degree;
 - (B) Section 707-701.5 relating to murder in the second degree;
 - (C) Section 707-710 relating to assault in the first degree;
 - (D) Section 707-711 relating to assault in the second degree;
 - (E) Section 707-720 relating to kidnapping;
 - (F) Section 707-721 relating to unlawful imprisonment in the first degree;
 - (G) Section 707-730 relating to sexual assault in the first degree;
 - (H) Section 707-731 relating to sexual assault in the second degree;
 - (I) Section 707-732 relating to sexual assault in the third degree;
 - (J) Section 707-733.6 relating to continuous sexual assault of a minor under the age of fourteen years;
 - (K) Section 707-750 relating to promoting child abuse in the first degree;
 - (L) Section 708-810 relating to burglary in the first degree;
 - (M) Section 708-811 relating to burglary in the second degree;
 - (N) Section 709-906 relating to abuse of family or household members; or
 - (O) Section 711-1106.4 relating to aggravated harassment by stalking;

and if any of these offenses has been committed against a family or household member as defined in section 586-1, the person shall serve a mandatory minimum term of imprisonment of fifteen days and be fined not less than \$150 nor more than \$600; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and
- (2) (3) For the second and any subsequent conviction for a violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than \$250 nor more than \$1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1) ~~and~~, (2), and (3) upon condition that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor.

(f) Any fines collected pursuant to subsection [(e)] shall be deposited into the spouse and child abuse special account established under section 601-3.6.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)

ACT 207

H.B. NO. 626

A Bill for an Act Relating to the Hawaii Uniform Collaborative Law Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER HAWAII UNIFORM COLLABORATIVE LAW ACT

§ -1 **Short title.** This chapter shall be known and may be cited as the “Hawaii Uniform Collaborative Law Act”.

§ -2 **Definitions.** As used in this chapter:
“Collaborative law communication” means a statement, whether oral or in a record, or verbal or nonverbal, that:

- (1) Is made to conduct, participate in, continue, or reconvene a collaborative law process; and
- (2) Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

“Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.

“Collaborative law process” means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

- (1) Sign a collaborative law participation agreement; and
- (2) Are represented by collaborative lawyers.

“Collaborative lawyer” means a lawyer who represents a party in a collaborative law process.

“Collaborative matter” means a dispute, transaction, claim, problem, or issue for resolution including a dispute, claim, or issue in a proceeding which is described in a collaborative law participation agreement.

“Law firm” means:

- (1) Lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association;
- (2) Lawyers employed in a legal services organization;
- (3) Lawyers employed in the legal department of a corporation or other organization; or
- (4) Lawyers employed in the legal department of a government or governmental subdivision, agency, or instrumentality.

“Nonparty participant” means a person, other than a party and the party’s collaborative lawyer, that participates in a collaborative law process.

“Party” means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Proceeding” means:

- (1) A judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery; or
- (2) A legislative hearing or similar process.

“Prospective party” means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Related to a collaborative matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

“Sign” means, with present intent, to authenticate or adopt a record:

- (1) To execute or adopt a tangible symbol; or
- (2) To attach to or logically associate with the record an electronic symbol, sound, or process.

“Tribunal” means:

- (1) A court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party’s interests in a matter; or
- (2) A legislative body conducting a hearing or similar process.

§ -3 Applicability. This chapter applies to a collaborative law participation agreement that meets the requirements of section -4 signed after the effective date of this chapter.

§ -4 Collaborative law participation agreement; requirements. (a) A collaborative law participation agreement shall:

- (1) Be in a record;
- (2) Be signed by the parties;
- (3) State the parties’ intention to resolve a collaborative matter through a collaborative law process under this chapter;
- (4) Describe the nature and scope of the matter;
- (5) Identify the collaborative lawyer who represents each party in the process; and

- (6) Contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.
- (b) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this chapter.

§ -5 Beginning and concluding a collaborative law process. (a) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(b) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(c) A collaborative law process is concluded by:

- (1) The resolution of a collaborative matter as evidenced by a signed record;
- (2) The resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or
- (3) The termination of the process.

(d) A collaborative law process terminates:

- (1) When a party gives notice to other parties in a record that the process is ended; or

(2) When a party:

(A) Begins a proceeding related to a collaborative matter without the agreement of all parties; or

(B) In a pending proceeding related to the matter:

- (i) Initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;
- (ii) Requests that the proceeding be put on the tribunal's active calendar; or
- (iii) Takes similar action requiring notice to be sent to the parties; or

(3) Except as otherwise provided by subsection (e), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(e) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(f) A party may terminate a collaborative law process with or without cause.

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than thirty days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (d)(3) is sent to the parties:

(1) The unrepresented party engages a successor collaborative lawyer; and

(2) In a signed record:

- (A) The parties consent to continue the process by reaffirming the collaborative law participation agreement;
- (B) The agreement is amended to identify the successor collaborative lawyer; and
- (C) The successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(h) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(i) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

§ -6 Proceedings pending before tribunal; status report. (a) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection (c) and sections -7 and -8, the filing operates as an application for a stay of the proceeding.

(b) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (a) is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(c) A tribunal in which a proceeding is stayed under subsection (a) may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

(d) A tribunal may not consider a communication made in violation of subsection (c).

(e) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

§ -7 Emergency order. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or family or household member as defined in section 586-1.

§ -8 Approval of agreement by tribunal. A tribunal may approve an agreement resulting from a collaborative law process.

§ -9 Disqualification of collaborative lawyer and lawyers in associated law firm. (a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) and sections -10 and -11, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).

(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

- (1) To ask a tribunal to approve an agreement resulting from the collaborative law process; or
- (2) To seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, or family or household member as defined in section 586-1 if a successor lawyer is not immediately available to represent that person. In that event, subsections (a) and (b) apply when the party, or family or household member is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of that person.

§ -10 Low income parties. (a) The disqualification of section -9(a) applies to a collaborative lawyer representing a party with or without fee.

(b) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under section -9(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:

- (1) The party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;
- (2) The collaborative law participation agreement so provides; and
- (3) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from that participation.

§ -11 Governmental entity as party. (a) The disqualification of section -9(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

- (1) The collaborative law participation agreement so provides; and
- (2) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from that participation.

§ -12 Disclosure of information. Except as provided by law other than this chapter, during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

§ -13 Standards of professional responsibility and mandatory reporting not affected. This chapter does not affect:

- (1) The professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or
- (2) The obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this State.

§ -14 Appropriateness of collaborative law process. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

- (1) Assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;
- (2) Provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collabor-

orative matter, such as litigation, mediation, arbitration, or expert evaluation; and

- (3) Advise the prospective party that:
 - (A) After signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;
 - (B) Participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and
 - (C) The collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by section -9(c), -10(b), or -11(b).

§ -15 Coercive or violent relationship. (a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(b) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(c) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

- (1) The party or the prospective party requests beginning or continuing a process; and
- (2) The collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.

§ -16 Confidentiality of collaborative law communication. A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of this state other than this chapter.

§ -17 Privilege against disclosure for collaborative law communication; admissibility; discovery. (a) Subject to sections -18 and -19, a collaborative law communication is privileged under subsection (b), is not subject to discovery, and is not admissible in evidence.

(b) In a proceeding, the following privileges apply:

- (1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.
- (2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

§ -18 Waiver and preclusion of privilege. (a) A privilege under section -17 may be waived in a record or orally during a proceeding if it is expressly

waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(b) A person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under section -17, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

§ -19 Limits of privilege. (a) There is no privilege under section -17 for a collaborative law communication that is:

- (1) Available to the public under chapter 92 or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;
- (2) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- (3) Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or
- (4) In an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(b) The privilege under section -17 for a collaborative law communication does not apply to the extent that a communication is:

- (1) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or
- (2) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the agencies of the department of human services responsible for child protective services or adult protective services is a party to or otherwise participates in the process.

(c) There is no privilege under section -17 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

- (1) A court proceeding involving a felony or misdemeanor; or
- (2) A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(d) If a collaborative law communication is subject to an exception under subsection (b) or (c), only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under section -17 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

§ -20 Authority of tribunal in case of noncompliance. (a) If an agreement fails to meet the requirements of section -4, or a lawyer fails to comply

with section -14 or -15, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:

- (1) Signed a record indicating an intention to enter into a collaborative law participation agreement; and
 - (2) Reasonably believed they were participating in a collaborative law process.
- (b) If a tribunal makes the findings specified in subsection (a), and the interests of justice require, the tribunal may:
- (1) Enforce an agreement evidenced by a record resulting from the process in which the parties participated;
 - (2) Apply the disqualification provisions of sections -5, -6, -9, -10, and -11; and
 - (3) Apply the privilege under section -17.

§ -21 Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ -22 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C.A. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C.A. section 7003(b)."

SECTION 2. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)

ACT 208

H.B. NO. 2175

A Bill for an Act Relating to Ethics.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the public interest is disserved when experts or persons who possess special knowledge or expertise necessary to the State decline to serve or are prevented from serving as members of task forces convened solely for the purpose of sharing knowledge or experience, making recommendations, or commenting on proposed courses of action, because legislation that may result from the advice or comments they provide or the recommendations they may make are related to matters to which they have a professional or financial connection.

The purpose of this Act is to allow persons with knowledge and expertise necessary to the State to serve as members of a task force that is convened on a temporary basis by the legislative or executive branch to study an issue, make recommendations, or offer advice on a specific subject, by excepting them from some of the requirements, restrictions, and prohibitions of the State's code of ethics. This Act also provides further clarity by adding a definition of "task force" to chapter 84, Hawaii Revised Statutes.

SECTION 2. Section 84-3, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Task force” means a group convened by resolution, statute, executive order, proclamation, or by invitation of the legislature, governor, or another state officer, to study a specific subject or issue, for a specific defined period of time, and to report to, offer a recommendation to, or advise the legislature, governor, or a state officer.”

SECTION 3. Section 84-12, Hawaii Revised Statutes, is amended to read as follows:

“§84-12 Confidential information. No legislator or employee shall disclose information which by law or practice is not available to the public and which the legislator or employee acquires in the course of the legislator’s or employee’s official duties, or use the information for the legislator’s or employee’s personal gain or for the benefit of anyone[-]; provided that this section shall not preclude a person who serves as the designee or representative of an entity that is a member of a task force from disclosing information to the entity which the person acquires as the entity’s designee or representative.”

SECTION 4. Section 84-13, Hawaii Revised Statutes, is amended to read as follows:

“§84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator’s or employee’s official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator’s or employee’s office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator’s or employee’s official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator’s or employee’s official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, or to prevent a person from serving on a task force or from serving on [committees] a task force committee, or from making statements or taking official action [in the exercise of the legislator’s legislative functions.] as a legislator, or a task force member or a task force member’s designee or representative. Every legislator, or task force member or designee or representative of a task force member shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator or task force member or task force member’s designee or representative believes may be affected by [legislative action-] the legislator’s or task force member’s official action.”

SECTION 5. Section 84-14, Hawaii Revised Statutes, is amended to read as follows:

“§84-14 Conflicts of interests. (a) No employee shall take any official action directly affecting:

- (1) A business or other undertaking in which ~~[he]~~ the employee has a substantial financial interest; or
- (2) A private undertaking in which ~~[he]~~ the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

A department head who is unable to disqualify ~~[himself]~~ the department head's self on any matter described in ~~[items]~~ paragraphs (1) and (2) ~~[above]~~ will not be in violation of this subsection if ~~[he]~~ the department head has complied with the disclosure requirements of section 84-17~~;~~ and.

A person whose position on a board, commission, or committee is mandated by statute, resolution, or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which ~~[he]~~ the person has a substantial financial interest; provided that the substantial financial interest is related to the member's particular qualifications.

(b) No employee shall acquire financial interests in any business or other undertaking which ~~[he]~~ the employee has reason to believe may be directly involved in official action to be taken by ~~[him-]~~ the employee.

(c) No legislator or employee shall assist any person or business or act in a representative capacity before any state or county agency for a contingent compensation in any transaction involving the State.

(d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which ~~[he]~~ the legislator or employee has participated or will participate as a legislator or employee, nor shall ~~[he]~~ the legislator or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which ~~[he]~~ the legislator or employee is an employee or legislator.

(e) No employee shall assist any person or business or act in a representative capacity before a state or county agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if ~~[he]~~ the employee has official authority over that state or county agency unless ~~[he]~~ the employee has complied with the disclosure requirements of section 84-17.

(f) Subsections (a), (b), and (d) shall not apply to a task force member or the designee or representative of that task force member whose service as a task force member would not otherwise cause that member, designee, or representative to be considered an employee, if the task force member or the designee or representative of that task force member complies with the disclosure requirements under section 84-17."

SECTION 6. Section 84-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned. This subsection shall not apply to any contract that is awarded in accordance with subsection (a) with a person or business represented or assisted by a person who was a member of a task force or served as the designee or representative of a task force member."

SECTION 7. Section 84-18, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No former employee, within twelve months after termination of the former employee’s employment, shall represent any person or business for a fee or other consideration, on matters in which the former employee participated as an employee or on matters involving official action by the particular state agency or subdivision thereof with which the former employee had actually served. This section shall not apply to a former task force member who, but for service as a task force member, would not be considered an employee.”

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)

ACT 209

H.B. NO. 2623

A Bill for an Act Relating to Transfer of Property.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 509-2, Hawaii Revised Statutes, is amended to read as follows:

“§509-2 Creation of joint tenancy, tenancy by the entirety, and tenancy in common. (a) Land, or any interest therein, or any other type of property or property rights or interests or interest therein, may be conveyed by a person to oneself and another or others as joint tenants, or by a person to oneself and one’s spouse or reciprocal beneficiary, or by spouses to themselves, or by reciprocal beneficiaries to themselves, as tenants by the entirety, or by joint tenants to themselves and another or others as joint tenants, or tenants in common to themselves or to themselves and another or others as joint tenants, or by tenants by the entirety to themselves or themselves and another or others as joint tenants or as tenants in common, or by one tenant by the entirety to the tenant’s spouse or reciprocal beneficiary of all of the tenant’s interest or interests, without the necessity of conveying through a third party, and each such instrument shall be construed as validly creating a joint tenancy, tenancy by the entirety, tenancy in common, or single ownership, as the case may be, if the tenor of the instrument manifestly indicates such intention.

(b) Conveyance of any real property located in the State and held by spouses or reciprocal beneficiaries as tenants by the entirety:

- (1) To a joint trust as tenant in severalty for their benefit and which is revocable and amendable by either or both during their joint life-time; or
- (2) In equal shares as tenants in common to their respective separate trusts, each of which is revocable and amendable by the respective grantor, or any accumulation of such conveyed property.

shall have the same immunity from the claims of their separate creditors as would exist if the spouses or reciprocal beneficiaries had continued to hold the real property or its proceeds as tenants by the entirety.

(c) Subsection (b) shall apply as long as:

- (1) The spouses remain married or reciprocal beneficiaries remain in a registered reciprocal beneficiary relationship;
- (2) The real property continues to be held in the trust as provided under subsection (b);
- (3) Both spouses or reciprocal beneficiaries remain beneficiaries of the trust and no waiver as provided under subsection (g) has occurred;
- (4) The first and last name of the spouse or reciprocal beneficiary for their respective trusts, or the first and last names of both spouses or reciprocal beneficiaries for a joint trust, are included in the name of the trust; and
- (5) Notice of the intention to continue to hold the real property or its proceeds as tenants by the entirety is provided by a deed of conveyance by the spouses or reciprocal beneficiaries and filed or recorded in land court or the bureau of conveyances, or both, as appropriate; provided that the notice shall specifically refer to this section and state that the real property to be held by the trust shall be immune from the claims of their separate creditors.

(d) After the death of the first of the spouses or reciprocal beneficiaries, all real property held in the trust that was immune from the claims of their separate creditors under subsection (b) immediately prior to the individual's death shall continue to have the same immunity from the claims of the decedent's separate creditors as would have existed if the spouses or reciprocal beneficiaries continued to hold the real property conveyed in trust or its proceeds as tenants by the entirety.

(e) In the event that any transfer of real property held in tenancy by the entirety to a trustee of a trust as provided under subsection (b) is held invalid by any court of proper jurisdiction, or if the trust is revoked or dissolved by a court decree or operation of law, while both spouses or reciprocal beneficiaries are living, then immediately upon the occurrence of either event, all real property held in the trust shall automatically be deemed to be held by both spouses or reciprocal beneficiaries as tenants by the entirety.

(f) Upon entry of a decree granting divorce or annulment between the spouses or the termination of the reciprocal beneficiary relationship, the immunity from the claims of separate creditors under subsection (b) shall immediately terminate and the real property shall be treated as held in tenancy in common.

(g) The immunity from the claims of separate creditors under subsections (b) and (d) may be waived as to any creditor or any specifically described trust property by:

- (1) The express provisions of a trust instrument; and
- (2) The written consent of both spouses or reciprocal beneficiaries.

(h) Except as provided otherwise herein, in any dispute relating to the immunity of trust property from the claims of a separate creditor of a spouse or reciprocal beneficiary, the spouses or reciprocal beneficiaries shall have the burden of proving the immunity of the trust property from the creditor's claims.

(i) After a conveyance of real property to a trust as provided under subsection (b), the real property transferred shall no longer be held by the spouses or reciprocal beneficiaries as tenants by the entirety and the disposition of the real property shall be controlled by the terms of the trust.

[(b)] (j) For the purposes of this chapter[~~:-~~ "Reciprocal"] "reciprocal beneficiary" means an adult who is a party to a registered reciprocal beneficiary relationship in accordance with chapter 572C, and has a valid certificate of reciprocal beneficiary relationship that has not been terminated."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)

ACT 210

H.B. NO. 2454

A Bill for an Act Relating to the Rap Back Program of the Hawaii Criminal Justice Data Center.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to allow programs statutorily authorized to conduct criminal history record checks to participate in a state-wide rap back program. A rap back program will inform an employer or other designated entity when an individual, who has undergone a fingerprint-based background check and whose fingerprints are retained by a criminal history repository after the check, is subsequently arrested. Such employers will be notified of an individual's arrest, if the individual's fingerprints, obtained after the arrest, are matched against the fingerprints that were initially submitted to the repository.

The Federal Bureau of Investigation is targeting 2013-2014 for its national rap back program to go into effect. The State's ability to take advantage of the information and capabilities that other states and the Federal Bureau of Investigation are using will help Hawaii develop its own program and will allow the State to be proactive in decision making for our vulnerable populations: children, the elderly, and the disabled.

The rap back program would allow a user department like the department of education or the department of human services to be affirmatively notified if an employee's or licensee's fingerprints, previously authorized for retention, are matched upon subsequent arrest.

The public will be better protected because employers and licensing agencies will get up-to-date criminal history information. In addition, employees and licensees may not need to be fingerprinted again as part of a re-application or renewal process because up-to-date information will be automatically forwarded to employers and licensing agencies as part of the rap back program.

SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The agencies and other entities named in subsection (b) may conduct state and national criminal history record checks on the personnel identified in subsection (b), and participate in the rap back program, for the purpose of determining suitability or fitness for a permit, license, or employment; provided that the Hawaii criminal justice data center may charge a reasonable fee for the criminal history record checks performed. The agencies and other entities named in subsection (b) shall notify applicants and employees subject to a criminal history record check pursuant to this section that their fingerprints shall be

retained by the Hawaii criminal justice data center~~[-]~~ and the Federal Bureau of Investigation. Notification shall also be given to the applicants and employees subject to the rap back program. The criminal history record check shall include the submission of fingerprints to:

- (1) The Federal Bureau of Investigation for a national criminal history record check; and
- (2) The Hawaii criminal justice data center for a state criminal history record check that shall include nonconviction data.

Except as otherwise provided in this section, criminal history record information shall be used exclusively for the stated purpose for which it was obtained."

2. By amending subsection (c) to read:

"(c) The applicant or employee subject to a criminal history record check shall provide to the requesting agency:

- (1) Consent to obtain the applicant's or employee's fingerprints ~~[and]~~, conduct the criminal history record check~~[-]~~, and participate in the rap back program;
- (2) Identifying information required by the Federal Bureau of Investigation ~~[which shall include but not be limited to]~~, such as the applicant's or employee's name, date of birth, height, weight, eye color, hair color, gender, race, and place of birth; and
- (3) A statement indicating whether the applicant or employee has ever been convicted of a crime."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 3, 2012.)

ACT 211

H.B. NO. 2448

A Bill for an Act Relating to Medicaid.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that the United States Supreme Court has significantly limited the states' ability to recover full reimbursement in medicaid third-party-lien cases. However, states may use formulas to address the allocation and distribution of proceeds in these cases. Many states have implemented such formulas to address this issue and to clarify the distribution of settlements in these cases. Section 346-37(h), Hawaii Revised Statutes, requires that a reasonable amount be contributed towards a claimant's attorney's fees and costs. This has resulted in disputes regarding the meaning of a "reasonable amount".

The legislature also finds that the medicaid program's ability to recover moneys that it is entitled to must be strengthened to help sustain the viability of the medicaid program. The medicaid program has had budget cuts that result in reduced benefits for all the recipients. Recovering reimbursements helps to reduce the burden on the program while helping to ensure the program is avail-

able for the community. These amendments would enhance the ability to recover these moneys.

The purpose of this part is to establish a formula for calculating the amount to be contributed by the State towards a claimant's attorney's fees and costs, in lieu of recovering the full amount.

SECTION 2. Section 346-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Medical institution” means a facility in which health care services are provided that also provides long-term care services at a nursing facility level of care for the purposes of dealing with medicaid liens in this chapter.”

SECTION 3. Section 346-29.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department may also place a lien against the real property of any recipient receiving medical assistance who is an inpatient in a nursing facility, intermediate care facility for individuals with intellectual disabilities, or other medical institution, after a state determination, pursuant to notice and hearing requirements of chapter 91, that the recipient cannot reasonably be expected to be discharged from the medical institution and returned home. The written notice of lien shall be accompanied by an itemized list of payments made by the department that identifies the provider of services, the dates of services, the amounts billed and paid, and the dates of payments, and shall be provided to the person against whom restitution is sought. Absent a good faith basis contesting the amount or validity of a specific line item charge or charges in the lien, the entire lien amount shall be presumed to be valid. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if the recipient has been institutionalized for six months or longer without a discharge plan.

- (1) The department may not place a lien on the recipient's home if the recipient's:
 - (A) Spouse;
 - (B) Minor, blind, or disabled child; or
 - (C) Sibling who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the date of the recipient's admission to the medical institution;
 is lawfully residing in the home.
- (2) The department shall not recover funds from the lien on the recipient's home when:
 - (A) A sibling who was residing in the home for a period of at least one year immediately before the date of the recipient's admission to the medical institution; or
 - (B) A son or daughter who was residing in the recipient's home for a period of at least two years immediately before the date of the recipient's admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to the recipient ~~[which]~~ that permitted ~~[such]~~ the recipient to reside at home rather than in an institution; lawfully resides in the home and has lawfully resided in the home on a continuous basis since the date of the recipient's admission to the medical institution.

- (3) The department also shall not recover funds from the lien if the recipient has a surviving spouse; or surviving minor, blind, or disabled child.
- (4) Any lien imposed with respect to this subsection shall be dissolved upon the individual's discharge from the medical institution and return home."

SECTION 4. Section 346-37, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (d), (e), (f), (g), (h), and (i) to read:

"(d) The department, as to this right of reimbursement, shall also be subrogated to all rights or claims that a claimant has against the third person for ~~[all damages]~~ medical assistance and burial payments not to exceed the full extent of the costs of medical assistance or burial payment furnished or to be furnished by the department. ~~[The department's right to full reimbursement of the costs of medical assistance or burial payment as a subrogee of a claimant shall not be diminished by the recovery of any judgment, settlement, or award of an amount less than the value of the original or settled claim as perceived or calculated by the claimant or any other person.]~~

To enforce its rights, the department may intervene or join in any action or proceeding brought by a claimant against the third person. If the action or proceeding is not commenced within six months after the first day on which medical assistance or burial payment is furnished by the department in connection with the injury, disease, or death involved, the department may institute and prosecute legal proceedings against the third person for the injury, disease, or death, in a state court, either alone (in its own name or in the name of a claimant) or in conjunction with the claimant.

(e) An attorney representing a claimant or third person shall make reasonable inquiry as to whether the claimant has received or is receiving from the department medical assistance related to the incident involved in the action. If the claimant, claimant's attorney, or claimant's heirs, representatives, or beneficiaries, or any third person have received from the department actual notice of its right to reimbursement or if they have reason to know that the claimant has received or is receiving from the department medical assistance related to the incident, then the claimant, claimant's attorney, claimant's heirs, representatives, or beneficiaries, or third person or third person's attorney shall give to the department timely written notice of any claim or action against a third person. At any time during the pendency of any claim or action, the claimant, claimant's attorney if represented, claimant's heirs, representatives, or beneficiaries, or third person or third person's attorney may contact the department to ascertain the full amount of the costs of medical assistance or burial payment made, which information shall be provided in a reasonable time by the department. Upon obtaining a judgment or reaching a settlement through negotiation or legal proceedings, but before the release of any award or settlement proceeds to any person:

- (1) The claimant's attorney or third person or third person's attorney, if the attorney has received actual notice from the department of a lien or if the attorney or third person has reason to know that a lien exists; or
- (2) The claimant or the claimant's heirs, representatives, or beneficiaries, if not represented by an attorney who has received actual notice of the lien,

shall notify the department immediately in order to ascertain and ~~pay the full amount of the~~ satisfy the department's right to reimbursement for costs of medical assistance or burial payment made.

(f) If liability is found to exist, or if the issue of third-party liability is settled or compromised without a finding of liability, regardless of who institutes legal proceedings or seeks other means of recovering, the department shall have a right to recover up to the full amount of the costs of medical assistance or burial payment made ~~from a settlement, award, or judgment.~~ To aid in the recovery of the costs, the department shall have a first lien ~~in~~ for up to the full amount of the costs of medical assistance or burial payment made against the proceeds from ~~all~~ damages ~~awarded~~ recovered in a ~~suit or~~ settlement ~~award, or judgment.~~ The lien shall attach as provided by subsection (g).

(g) The lien of the department for reimbursement of costs of medical assistance or burial payments under subsection (f), shall attach by a written notice of lien served upon the claimant's attorney or upon the third person, the third person's agent, attorney, or insurance company. The method of service shall be by certified or registered mail, return receipt requested, or by delivery of the notice of lien personally to ~~the~~ these individuals ~~referred to~~. Service by certified or registered mail is complete upon receipt. The notice of lien shall state the name of the injured, diseased, or deceased person, the amount of the lien, and the date of the accident or incident ~~which~~ that caused the injuries, disease, or death ~~which~~ that necessitated the department's medical assistance or burial payments. If the notice of lien is served upon the claimant's attorney, the notice of lien shall state that the claimant's attorney shall pay the ~~full amount of the~~ lien from the proceeds of any judgment, settlement, or compromise based on the incident or accident ~~as provided in this section.~~ If the notice of lien is served upon the third person, or the third person's agent, attorney, or insurance company, the notice of lien shall state that the third person shall pay the ~~full amount of the~~ lien as provided in this section prior to disbursing any of the proceeds to the claimant or to the claimant's attorney. A notice of lien may be amended from time to time until extinguished, each amendment taking effect upon proper service.

When restitution is sought in a criminal proceeding from a third person who has caused injury to a recipient of medical assistance, a written notice of lien and an itemized list of payments made by the department that identifies the provider of services, the dates of services, the amounts billed and paid, and the dates of payments, shall be provided to the court and to the person against whom restitution is sought. Absent a good faith basis contesting the amount or validity of a specific line item charge or charges in the lien, the entire lien amount shall be presumed valid by the court in determining the amount of restitution pursuant to section 706-646.

(h) The lien shall attach as provided by subsection (g). If a notice of lien is properly served upon the attorney representing the claimant as provided in subsection (g), that attorney shall pay the ~~full amount of the~~ lien ~~as provided in this section~~ prior to disbursing any of the proceeds of the suit or settlement to the attorney's client. If a notice of lien is properly served upon the third person, the third person's agent or attorney, or the third person's insurance company, as provided in subsection (g), it shall be the responsibility of the person receiving the notices to pay the ~~full amount of the~~ lien as provided in this section prior to disbursing any of the proceeds to the claimant's attorney. The lien shall be satisfied from that portion of the settlement, award, or judgment allocated or allocable to payments by the department for medical assistance and burial payments. Any allocation by a judge, jury, arbitrator, or similar dispute resolution person or tribunal shall be binding; provided that the department's medical as-

sistance and burial payments are included as part of the case or claims brought by the claimant in any action. Any allocation by the claimant or third party may be considered but is not binding on the department. If there is no allocation, a reasonable allocation shall be determined by agreement, administrative hearing under subsection (i), or a court of competent jurisdiction.

If, after having received timely written notice of any claim or action under subsection (e), the department did not intervene or join in the action or prosecute its own claims or actively participate with claimant or claimant's attorney in the prosecution of claims, or a distribution agreement was not entered into between the parties, reimbursement shall be as follows: If the lien is less than or equal to one-third of the settlement, award, or judgment, and there is no allocation by a judge, jury, arbitrator, or similar dispute resolution person or tribunal, then there shall be a rebuttable presumption that the amount of reimbursement due the department is the total payments for medical assistance or burial payments by the department or one-third of the settlement, award, or judgment, whichever is less. Any party challenging this rebuttable presumption shall bear the burden of proof. The department's fair share of claimant's reasonable attorney's fees and expenses shall be deducted from the department's lien recovery. There shall be a rebuttable presumption that one-third of the department's gross reimbursement amount plus a proportionate share of the general excise tax is a reasonable amount for the department's contribution towards claimant's attorney's fees and expenses. Any party challenging this rebuttable presumption shall bear the burden of proof.

If the department alone prosecutes claims that include its medical assistance or burial payments, it shall not be required to reduce its lien on account of attorney's fees or expenses, if any, incurred by the claimant or claimant's attorney.

If the claimant's attorney and the department contribute to the recovery of medical assistance or burial payments made by the department, then the [department shall determine its] department's fair contribution toward [attorney] the claimant's attorney's fees and costs incurred [in the action that] shall be a reasonable amount based solely upon legitimate costs and services rendered by the claimant or claimant's attorney in recovering the lien amount. Any dispute regarding the department's determination of its contribution to claimant's attorney's fees and costs may be submitted to administrative hearing under subsection (i) or a court of competent jurisdiction. The value of services contributed by the claimant and department may be considered in fairly allocating fees and costs between the claimant and department where both contribute to recovering the lien amount.

The department's lien, after reduction for its contribution to claimant's attorney's fees and expenses, shall not exceed one-third of the settlement, award, or judgment. Payment of one-third of the settlement, award, or judgment to the department and two-thirds to the claimant and claimant's attorney shall satisfy the entire lien if the department's lien, after reduction for its contribution to claimant's attorney's fees and expenses, exceeds one-third of the settlement, award, or judgment. Any claimant who asserts that reimbursement to the department should be less than one-third of the settlement, award, or judgment, under the circumstances of that claim, shall bear the burden of proof.

(i) [Notwithstanding any other law to the contrary, if] If there is a dispute between the claimant, the claimant's agent or the claimant's attorney, and the department concerning the existence of the lien or the amount of the lien, or the amount to be reimbursed, the claimant, the claimant's agent, or the claimant's attorney [shall] may submit the dispute to a court of competent jurisdiction or request in writing [a] an administrative hearing on the dispute. After receipt

by the department of a written request, the department shall conduct an administrative hearing within a reasonable period of time. Chapter 91, including any provisions for judicial review or appeal, shall apply to the hearing. Funds sufficient to fully satisfy the reimbursement rights of the department shall be either retained by the person served with the notice of lien, shall be paid to the department, or otherwise reserved subject to agreement with the department pending ~~[its]~~ a decision by the court or the department and any subsequent judicial review or appeal."

2. By amending subsection (k) to read:

"(k) Any person who is subject to the lien who fails to pay the full amount due under this section to the department for reimbursement of the costs of medical assistance, although able to do so from the proceeds of the suit or settlement, shall be personally liable to the department for any damage proximately caused to the department by ~~[such]~~ the failure."

3. By amending subsection (o) to read:

"(o) In third-party liability situations, the medical assistance program of the department shall be fully reimbursed the amount due under this section or funds sufficient to fully reimburse the department the amount due under this section shall be retained by the person served with the notice of lien or otherwise reserved in a manner agreeable to the department before the claimant receives any money from the settlement or award. This section is not intended to restrict or diminish the right of the department to settle or compromise its reimbursement rights under this section for less than the full amount due or enter into any agreement with claimant, claimant's attorney or representative, or other party for the distribution of proceeds from a suit or settlement."

SECTION 5. Section 706-646, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) As used in this section, "victim" includes any of the following:

- (a) The direct victim of a crime including a business entity, trust, or governmental entity;
- (b) If the victim dies as a result of the crime, a surviving relative of the victim as defined in chapter 351; or
- (c) A governmental entity ~~[which]~~ that has reimbursed the victim for losses arising as a result of the crime~~[-]~~ or paid for medical care provided to the victim as a result of the crime."

PART II

SECTION 6. The department of human services may collaborate with the Healthcare Association of Hawaii, the Hawaii Long Term Care Association, nursing facility providers, and home- and community-based service providers, including adult residential care homes and foster family homes, to develop a revised methodology for determining the level of acuity of nursing facility residents who are medicaid recipients, including those with complex medical conditions, to set reimbursements at levels that are fair and equitable. The department of human services and the collaborating organizations and providers may submit to the legislature a joint report containing recommendations and an implementation plan no later than twenty days prior to the convening of the regular session of 2013.

SECTION 7. The department of human services may work with the department of health to develop an equitable referral system relating to the discharge of medicaid patients from hospitals, nursing homes, and long-term care

ACT 212

facilities based on the patient's acuity level for proper placement in either an adult residential care home, community care foster family home, or an expanded adult residential care home.

PART III

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved July 3, 2012.)

ACT 212

S.B. NO. 2221

A Bill for an Act Relating to Child Abuse.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 707-751, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of promoting child abuse in the second degree if, knowing or having reason to know its character and content, the person:

- (a) Disseminates child pornography;
- (b) Reproduces child pornography with intent to disseminate;
- (c) Disseminates any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; ~~or~~
- (d) Disseminates any pornographic material which employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct~~[-]; or~~
- (e) Possesses thirty or more images of any form of child pornography, and the content of at least one image contains one or more of the following:
 - (i) A minor who is younger than the age of twelve;
 - (ii) Sadomasochistic abuse of a minor; or
 - (iii) Bestiality involving a minor."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 3, 2012.)

ACT 213

S.B. NO. 2222

A Bill for an Act Relating to Sexual Images Produced by Minors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding two new sections to part II to be appropriately designated and to read as follows:

“§712- Promoting minor-produced sexual images in the first degree. (1)

A person, eighteen years of age or older, commits the offense of promoting minor-produced sexual images in the first degree if the person intentionally or knowingly commands, requests, or encourages a minor to use a computer, cell phone, or any other device capable of electronic data transmission or distribution, to transmit to any person a nude photograph or video of a minor.

(2) For purposes of this section, a “minor” means any person under eighteen years of age.

(3) Promoting minor-produced sexual images in the first degree is a misdemeanor.

§712- Promoting minor-produced sexual images in the second degree. (1) A minor commits the offense of promoting minor-produced sexual images in the second degree if the minor:

(a) Knowingly uses a computer, cell phone, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another person a nude photograph or video of a minor or the minor’s self; or

(b) Intentionally or knowingly commands, requests, or encourages another minor to use a computer, cell phone, or any other device capable of electronic data transmission or distribution, to transmit to any person a nude photograph or video of a minor or the minor’s self.

(2) A person, of any age, commits the offense of promoting minor-produced sexual images in the second degree if the person knowingly possesses a nude photograph or video of a minor transmitted or distributed in violation of subsection (1). It is an affirmative defense under this subsection that the person took reasonable steps to destroy or eliminate the nude photograph or video of a minor.

(3) For purposes of this section, a “minor” means any person under eighteen years of age.

(4) Promoting minor-produced sexual images in the second degree is a petty misdemeanor.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved July 3, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 214

S.B. NO. 2486

A Bill for an Act Relating to the Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 707-715, Hawaii Revised Statutes, is amended to read as follows:

“§707-715 Terroristic threatening, defined. A person commits the offense of terroristic threatening if the person threatens, by word or conduct, to cause bodily injury to another person or serious damage or harm to property, including the pets or livestock, of another or to commit a felony:

- (1) With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person; or
- (2) With intent to cause, or in reckless disregard of the risk of causing evacuation of a building, place of assembly, or facility of public transportation.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 3, 2012.)

ACT 215

H.B. NO. 304

A Bill for an Act Relating to State Finances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the national and global economic crisis that began in the second half of 2008 has caused significant economic problems in numerous industries in the State. Difficult economic times and declining tax revenues resulted in significant budget cuts and a reduction of state government core services.

The reduction in services has jeopardized the safety net of basic human services, health, and education needs for Hawaii’s residents and families. While all of Hawaii’s residents have been affected by the situation, gap group families and families closest to the poverty line have been severely impacted.

The purpose of this Act is to appropriate moneys to support programs essential to education, public health, and public welfare and begin to repair the decimated safety net.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$274,111 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Adult Friends for Youth.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Alzheimer's Association, Aloha Chapter.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$225,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Ballet Hawaii.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$125,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Best Buddies International.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Catholic Charities Hawaii.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Catholic Charities Hawaii.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$166,175 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to The Chamber of Commerce of Hawaii.

The sum appropriated shall be expended by the department of defense for the purposes of this Act.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$137,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Child and Family Service - Maui.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$151,391 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Child and Family Service - Kauai.

ACT 215

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$160,389 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Child and Family Service - Oahu.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to The Children's Alliance of Hawaii, Inc.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$140,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Coalition for a Drug-Free Hawaii.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$204,628 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Domestic Violence Action Center.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 15. There is appropriated out of the general revenues of the State of Hawaii the sum of \$52,800 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Family Promise of Hawaii.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Gregory House Programs.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 17. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Hawaii 3R's.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 18. There is appropriated out of the general revenues of the State of Hawaii the sum of \$292,000 or so much thereof as may be necessary for

fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Hawaii Family Law Clinic.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 19. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Hawaii Meth Project.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 20. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii United Okinawa Association.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 21. There is appropriated out of the general revenues of the State of Hawaii the sum of \$468,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii Theater Center.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 22. There is appropriated out of the general revenues of the State of Hawaii the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Kalihi-Palama Health Center.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 23. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to La'i Opua 2020.

The sum appropriated shall be expended by the department of Hawaiian home lands for the purposes of this Act.

SECTION 24. There is appropriated out of the general revenues of the State of Hawaii the sum of \$800,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Legal Aid Society of Hawaii.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 25. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Malama Learning Center.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 26. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Moanalua Gardens Foundation.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 27. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Moiliili Community Center.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 28. There is appropriated out of the general revenues of the State of Hawaii the sum of \$288,060 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to ORI Anuenue Hale, Inc.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 29. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Pacific Renal Care Foundation.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 30. There is appropriated out of the general revenues of the State of Hawaii the sum of \$68,940 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Palama Settlement.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 31. There is appropriated out of the general revenues of the State of Hawaii the sum of \$110,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Partners in Development Foundation.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 32. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Parents And Children Together.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 33. There is appropriated out of the general revenues of the State of Hawaii the sum of \$450,293 or so much thereof as may be necessary for fiscal year 2012-2013 to provide funding for grants pursuant to chapter 42F, Hawaii Revised Statutes, to Read Aloud America, Inc.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 34. There is appropriated out of the general revenues of the State of Hawaii the sum of \$169,592 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Read To Me International Foundation.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 35. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Surfing the Nations.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 36. There is appropriated out of the general revenues of the State of Hawaii the sum of \$450,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Susannah Wesley Community Center.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 37. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Volunteer Legal Services Hawaii.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 38. There is appropriated out of the general revenues of the State of Hawaii the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Wahiawa General Hospital.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 39. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Wahiawa General Hospital.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 40. There is appropriated out of the general revenues of the State of Hawaii the sum of \$60,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Waikiki Community Center, Inc.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 41. There is appropriated out of the general revenues of the State of Hawaii the sum of \$375,000 or so much thereof as may be necessary for

ACT 216

fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Waiohuli Hawaiian Homesteaders Association, Inc.

The sum appropriated shall be expended by the department of Hawaiian home lands for the purposes of this Act.

SECTION 42. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 43. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)

ACT 216

S.B. NO. 2576

A Bill for an Act Relating to Prostitution.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to authorize a person convicted of committing the offense of prostitution to file a motion to vacate the conviction under certain circumstances and to establish procedures for the motion to vacate.

SECTION 2. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§712- Prostitution; motion to vacate conviction. (1) A person convicted of committing the offense of prostitution under section 712-1200, loitering for the purpose of engaging in or advancing prostitution under section 712-1206, street solicitation of prostitution in designated areas under section 712-1207, or convicted of a lesser offense when originally charged with a violation of section 712-1200, 712-1206, or 712-1207, may file a motion to vacate the conviction if the defendant’s participation in the offense was the result of the person having been a victim of:

- (a) Promoting prostitution in the first degree under section 712-1202; or
 - (b) A severe form of trafficking as defined in title 22 United States Code section 7102(13).
- (2) A motion filed under this section shall:
- (a) Be in writing;
 - (b) Be signed and sworn to by the petitioner;
 - (c) Be made within six years after the date that the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of the trafficking that may be jeopardized by the bringing of a motion, or for other reasons consistent with the purpose of this section;
 - (d) Describe all the grounds and evidence for vacation of a conviction which are available to the petitioner and of which the petitioner has or by the exercise of reasonable diligence should have knowledge,

and provide copies of any official documents showing that the defendant is entitled to relief under this section; and

- (e) Be subject to the review and written approval of the state agency or county prosecutor responsible for prosecuting the offense that is the subject of the motion to vacate conviction.

(3) The court shall hold a hearing on a motion filed under this section if the motion satisfies the requirements of subsection (2); provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted.

(4) If the court grants a motion filed under this section, the court shall vacate the conviction.

(5) A person making a motion to vacate pursuant to this section has the burden of proof by a preponderance of the evidence.

(6) This section shall not apply to a motion to vacate a conviction under this chapter for:

- (a) Promoting prostitution under section 712-1202 or 712-1203; or
- (b) A person who pays, agrees to pay or offers a fee to another person to engage in sexual conduct.

(7) For the purposes of this section:

“Victim of trafficking” and “victim of a severe form of trafficking” shall have the same meaning as in title 22 United States Code section 7102.”

SECTION 3. Section 712-1200, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) A person convicted of committing the offense of prostitution shall be sentenced as follows:

- (a) For the first offense, when the court has not deferred further proceedings pursuant to chapter 853, a ~~[mandatory]~~ minimum fine of \$500 and the person may be sentenced to a term of imprisonment of not more than thirty days or probation; provided that in the event the convicted person defaults in payment of the \$500 fine, and the default was not contumacious, the court may sentence the person to perform services for the community as authorized by section 706-605(1).
- (b) For any subsequent offense, a ~~[mandatory]~~ minimum fine of \$500 and a term of imprisonment of thirty days or probation, without possibility of deferral of further proceedings pursuant to chapter 853 and without possibility of suspension of sentence.
- (c) For the purpose of this subsection, if the court has deferred further proceedings pursuant to chapter 853, and notwithstanding any provision of chapter 853 to the contrary, the defendant shall not be eligible to apply for expungement pursuant to section 831-3.2 until four years following discharge. A plea previously entered by a defendant under section 853-1 for a violation of this section shall be considered a prior offense. When the court has ordered a sentence of probation, the court may impose as a condition of probation that the defendant complete a course of prostitution intervention classes; provided that the court may only impose such condition for one term of probation.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 217

H.B. NO. 2275

A Bill for an Act Relating to Hospitals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Hospitals in the State face major financial challenges in providing quality health care for Hawaii residents. Some of these challenges are the result of payments for care of medicaid enrollees that do not cover the actual costs of care. The legislature finds that federal funding to help financially sustain Hawaii's hospitals may be accessed through a provider fee.

Provider fees are used in forty-seven states and the District of Columbia as a means of drawing down federal funds to sustain state medicaid programs due to rising state budget deficits, increasing health care costs, and expanding medicaid enrollment. Implementation of a provider fee in Hawaii would help stabilize medicaid payments to facilities and slow the erosion of access to care for beneficiaries served by the program.

Medicaid is jointly financed by the federal and state governments, but by statutory formula, the federal government pays between fifty per cent and seventy-four per cent of medicaid costs incurred by states for care delivered to their medicaid beneficiaries. Federal assistance percentages vary by state, with states that have lower per capita incomes receiving higher federal matching rates. Under federal rules, the state share must be paid through public funds that are not federal funds.

Provider fees, which are collected from specific categories of health care providers that agree to the fee, may be imposed on nineteen different classes of health care services, including inpatient and outpatient hospital and nursing facility services. However, there are limitations on the way provider fees may be structured. The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, P.L. 102-234, passed by Congress in 1991, imposes the following requirements:

- (1) Broad-based. To be considered broad-based, a provider fee must be imposed on all health care items or services furnished by all non-federal, non-public providers in the class in the State. Provider fee programs may exclude public facilities without violating federal law;
- (2) Uniformly imposed. In general, a provider fee is uniformly imposed if it is the same amount or rate for each provider in the class; and
- (3) Hold harmless prohibition. States may not hold providers harmless. A provider fee is considered to hold the provider harmless if the providers paying the fee receive, directly or indirectly, non-medicaid payments from the state that are positively correlated to the fee paid, or any offset or waiver that guarantees to hold the provider

harmless for all or a portion of the fee. A provider fee is also considered to hold the provider harmless if the medicaid payments to the providers vary based only on the amount of the total fees paid by the provider.

The maximum provider fee a state may impose is currently six per cent of net patient revenue. A number of proposals have been made, but not implemented, to eliminate or reduce the limits on medicaid provider fee programs. However, because provider fees are used by so many states, many of those who are knowledgeable about this subject view elimination of provider fees as unlikely due to their strong political support. A more realistic expectation is a reduction of the provider fee maximum, as proposed by President Barack Obama's fiscal year 2012 budget, which would reduce the maximum to three and one-half per cent in 2017. This proposal recognizes that provider fees are essential for most states to maintain a stable, functioning medicaid program.

In Hawaii, a provider fee would allow an increase in medicaid payments at a time when constraints on the State's budget have forced a reduction in payments and benefits. The additional federal funds for hospital payments obtained via the fee program would reduce the amount of losses incurred by hospitals. As such, the provider fee would help preserve access to health care for the medicaid population and sustain the State's entire health care system.

State hospitals will not be covered by the hospital sustainability fee. However, other provisions of this law are intended to assure that state hospitals will benefit from the use of their certified expenditures and intergovernmental transfers to generate federal funds to cover their operating expenses.

The purpose of this Act is to ensure access to health care for medicaid recipients by:

- (1) Establishing a hospital sustainability fee assessed on health care items or services provided by private hospitals;
- (2) Establishing a hospital sustainability program special fund to receive moneys from the hospital sustainability fee and federal medicaid matching funds; and
- (3) Providing for the use of the moneys in the hospital sustainability program special fund.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER HOSPITAL SUSTAINABILITY PROGRAM

§ -1 Title. This chapter shall be known and may be cited as the “Hospital Sustainability Program Act”.

§ -2 Findings and declaration of necessity. It is the intent of the legislature to establish a special fund within the state treasury to receive revenue from the imposition of a hospital sustainability fee to be administered by the department and to use the revenue from the fee and associated federal medicaid matching funds to make direct payments to hospitals and for other purposes as set forth in this chapter.

§ -3 Definitions. As used in this chapter:

“Department” means the department of human services.

“Fiscal year” means a twelve-month period from July 1 of a particular calendar year to June 30 of the following calendar year, inclusive.

"Hospital" means any facility licensed pursuant to chapter 11-93, Hawaii Administrative Rules.

"Inpatient care" means the care of patients whose conditions require admission to a hospital.

"Net patient service revenue" means gross revenue from inpatient and outpatient care provided to hospital patients converted to net patient revenue utilizing data from Worksheets G-2 and G-3 of each hospital's medicare cost report for the period ending between July 1, 2009, and June 30, 2010. If the hospital is new or did not file a fiscal year medicare cost report, the department shall obtain the hospital's net patient service revenue from the most recent period available.

"Outpatient care" means all services furnished by hospitals to patients who are registered as hospital outpatients.

"Private hospital" means those hospitals named in attachment A of the QUEST expanded medicaid section 1115 demonstration waiver that are currently operating.

"Section 1115 waiver" means the QUEST expanded medicaid section 1115 demonstration waiver (Number 11-W-00001/9).

§ -4 Hospital sustainability program special fund. (a) There is created in the state treasury the hospital sustainability program special fund to be administered by the department into which shall be deposited all moneys collected under this chapter.

(b) Moneys in the hospital sustainability program special fund shall consist of:

- (1) All revenue received by the department from the hospital sustainability fee;
- (2) All federal medicaid funds received by the department as a result of matching expenditures made with the hospital sustainability fee;
- (3) Any interest or penalties levied in conjunction with the administration of this chapter; and
- (4) Any designated appropriations, federal funds, donations, gifts, or moneys from any other sources.

(c) Moneys in the hospital sustainability program special fund shall be used exclusively as follows:

- (1) To make direct payments to private hospitals pursuant to the terms of the section 1115 waiver. At least ninety-three per cent of the moneys in the special fund shall be used for this purpose, provided that in no instance shall a hospital receive supplemental payments that exceed its allowable uncompensated care costs;
- (2) Two per cent of the moneys in the special fund shall be used for medicaid covered services for the benefit of hospitals;
- (3) Five per cent of the moneys in the special fund may be used by the department for other departmental purposes; and
- (4) Any money remaining in the special fund six months after the repeal of this chapter, shall be distributed to hospitals within thirty days in the same proportions as received from the hospitals.

(d) The department shall utilize federal funds derived from state hospital certified expenditures to make supplemental payments to state hospitals and is authorized to receive intergovernmental transfers from the state hospitals to support increased capitation rates to health plans for the benefit of the state hospitals. During any period in which the hospital sustainability fee is in effect, certified expenditures of state hospitals shall not be used to make or support direct payments to private hospitals.

(e) The hospital sustainability program special fund appropriation ceiling shall be \$42,000,000 for fiscal year 2012-2013 and \$37,000,000 in federal funds for HMS 401 for fiscal year 2012-2013.

§ -5 Hospital sustainability fee. (a) Effective July 1, 2012, or, if later, the effective date of any necessary federal approvals, the department shall charge and collect provider fees, to be known as the hospital sustainability fee, on inpatient and outpatient care services provided by private hospitals.

(b) The hospital sustainability fee shall be based on the net patient service revenue for inpatient services and outpatient services, respectively, of all hospitals that are subject to the hospital sustainability fee.

(c) The hospital sustainability fee for inpatient care services may differ from the fee for outpatient care services but the fees shall not in the aggregate exceed three per cent of net patient service revenue as derived from the hospitals' medicare cost report ending during state fiscal year 2010. The inpatient hospital sustainability fee shall be 2.471 per cent of net inpatient hospital service revenue. The outpatient hospital sustainability fee shall be three per cent of net outpatient hospital service revenue. Each fee shall be the same percentage for all affected hospitals, subject to subsection (d).

(d) The department shall exempt children's hospitals, federal hospitals, public hospitals, rehabilitation hospitals, and psychiatric hospitals from the hospital sustainability fees on inpatient and outpatient care services. In addition, the department shall exempt hospitals with net outpatient revenue of less than \$45,000,000 per year (based on fiscal year 2010 reports) from the hospital sustainability fee on outpatient care services.

(e) The department, with agreement by the hospital trade association located in Hawaii, may modify the structure of the hospital sustainability program if such modification is necessary to obtain federal waiver approval consistent with the requirements of 42 Code of Federal Regulations section 433.68(e)(2).

§ -6 Hospital sustainability fee assessments. (a) Hospitals shall pay the hospital sustainability fee to the department in accordance with this chapter. The fee shall be divided and paid in four equal installments on a quarterly basis.

(b) The department shall collect, and each hospital shall pay, the hospital sustainability fee not later than the fifteenth day after the end of each calendar quarter, provided that if required federal approvals have not been secured by the end of a calendar quarter the fees for that quarter shall be paid within ten days after notification to the hospitals that the required approvals have been received.

§ -7 Federal approval. The department shall seek waivers and any additional approvals from the Centers for Medicare and Medicaid Services that may be necessary to implement the hospital sustainability program.

§ -8 Multifacility locations. If an entity conducts, operates, or maintains more than one hospital licensed by the department of health, the entity shall pay the hospital sustainability fee for each hospital separately.

§ -9 Penalties for failure to pay the hospital sustainability fee. (a) If a hospital fails to pay the full amount of any hospital sustainability fee when due, there shall be added to the fee, unless waived by the department for reasonable cause, a penalty equal to prime plus two per cent of the fee that was not paid when due. Any subsequent payments shall be credited first to unpaid fee

amounts beginning with the most delinquent installment rather than to penalty or interest amounts.

(b) In addition to the penalty imposed by subsection (a), the department may seek any of the following remedies for the failure of any hospital to pay its fee when due:

- (1) Withholding any medical assistance reimbursement payments until such time as the fee amount is paid in full;
- (2) Suspension or revocation of the hospital license; or
- (3) Development of a plan that requires the hospital to pay any delinquent fee in installments.

§ -10 Private hospital payments. (a) The department shall use moneys from the hospital sustainability program special fund to make direct payments to private hospitals in an amount equal to \$77,468,401 to cover the uncompensated care costs incurred by private hospitals for serving medicaid and uninsured individuals during state fiscal year 2013.

(b) The department shall make quarterly payments to private hospitals to reimburse their uncompensated care costs within twenty days after the end of each calendar quarter; provided that payments shall not be due until at least fifteen days after receipt of the fees required by section -6. If the department fails to pay the full amount when due, there shall be added to the payment a penalty equal to prime plus two per cent of the payment that was not paid when due.

(c) Each eligible hospital's quarterly payment shall be equal to one-quarter of its uncompensated care costs for the fiscal year in which payment is made, as derived from the uncompensated care costs reported by all private hospitals for fiscal year 2010.

(d) If federal approval pursuant to section -7 is not received until after the end of any quarter for which the hospital sustainability fee is applicable, the department shall make the initial quarterly payments within five days after receipt of the hospital sustainability fee for the respective quarter.

(e) To the extent the hospital sustainability program is not effective for the entire year, the hospital sustainability fee, the state medicaid expenses and administrative fee, and the corresponding uncompensated care payments shall be based on the proportion of the fiscal year the program is in effect.

§ -11 Special designation of hospital sustainability program special fund. Notwithstanding section 37-53, and any law or any administrative rule to the contrary, the specific purposes set out in section -4(c) are established as being exclusive uses of the hospital sustainability program special fund. The hospital sustainability program special fund shall not and may not be used for any other purposes, notwithstanding any authority granted to the governor or any other state official by any other statutory provisions relating to the allocation or reallocation of funds.

§ -12 Termination. (a) Collection of the hospital sustainability fee established by section -5 shall be discontinued if:

- (1) The required federal approvals specified in section -7 are not granted or are revoked by the Centers for Medicare and Medicaid Services;
- (2) The department reduces funding for hospital services below the state appropriation in effect as of the effective date of this chapter;
- (3) The department or any other state agency uses the money in the hospital sustainability program special fund for any use other than the uses permitted by this chapter; or

- (4) Federal financial participation to match the revenue from the hospital sustainability fee becomes unavailable under federal law; provided that the department shall terminate the imposition of the hospital sustainability fee beginning on the date the federal statutory, regulatory, or interpretive change takes effect.

(b) Notwithstanding section -4(c), if collection of the hospital sustainability fee is discontinued as provided in this section, any remaining moneys in the hospital sustainability program special fund shall be distributed within thirty days to the private hospitals on the same basis as the hospital sustainability fee was collected.

§ -13 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

SECTION 3. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
 - (2) Special out-of-school time instructional program fund under section 302A-1310;
 - (3) School cafeteria special funds of the department of education;
 - (4) Special funds of the University of Hawaii;
 - (5) State educational facilities improvement special fund;
 - (6) Special funds established by section 206E-6;
 - (7) Aloha Tower fund created by section 206J-17;
 - (8) Funds of the employees' retirement system created by section 88-109;
 - (9) Unemployment compensation fund established under section 383-121;
 - (10) Hawaii hurricane relief fund established under section 431P-2;
 - (11) Convention center enterprise special fund established under section 201B-8;
 - (12) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
 - (13) Tourism special fund established under section 201B-11;
 - (14) Universal service fund established under section 269-42;
 - (15) Emergency and budget reserve fund under section 328L-3;
 - (16) Public schools special fees and charges fund under section 302A-1130;
 - (17) Sport fish special fund under section 187A-9.5;
 - (18) Center for nursing special fund under section 304A-2163;
 - (19) Passenger facility charge special fund established by section 261-5.5;
 - (20) Court interpreting services revolving fund under section 607-1.5;
 - (21) Hawaii cancer research special fund;
 - (22) Community health centers special fund;
 - (23) Emergency medical services special fund;
 - (24) Rental motor vehicle customer facility charge special fund established under section 261-5.6; ~~and~~
 - (25) Shared services technology special fund under section 27-43[.]; ~~and~~
 - (26) Hospital sustainability program special fund under section -4.

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012, and shall be repealed on June 30, 2013; provided that section -4(c), Hawaii Revised Statutes, in section 2 of this Act shall be repealed on December 31, 2013.

(Approved July 3, 2012.)

ACT 218

S.B. NO. 3010

A Bill for an Act Relating to Transportation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the department of transportation is charged with the implementation of the bridge rehabilitation and replacement program for bridges with a sufficiency rating of less than eighty to be designed and constructed. There are currently seven hundred fifty-six state-owned bridges, of which two hundred fifty-six are functionally obsolete and thirty-nine are structurally deficient. Functionally obsolete bridges are defined as bridges with geometric deficiencies such as being too narrow. Structurally deficient bridges are defined as bridges with a poor assessment of the structural condition of the bridge, including the waterway opening adequacy.

There are currently thirty bridges under the jurisdiction of the department of transportation that are either functionally obsolete or structurally deficient and that are in the design phase that are planned for rehabilitation and replacement, in addition to the Hana highway bridge preservation plan, which needs to move forward for construction.

The purpose of this Act is to expedite construction projects for the bridge rehabilitation and replacement program by providing temporary exemptions from certain state and county requirements.

SECTION 2. Beginning July 1, 2012, and ending June 30, 2017, the department of transportation and any of its contractors shall be exempt from state requirements under the following, but only to the extent necessary to expedite the projects enumerated under section 3 of this Act:

- (1) Chapter 6E, Hawaii Revised Statutes, historic preservation;
- (2) Part II of chapter 171, Hawaii Revised Statutes, public lands;
- (3) Chapter 174C, Hawaii Revised Statutes, state water code;
- (4) Chapter 180, Hawaii Revised Statutes, soil and water conservation districts;
- (5) Chapter 180C, Hawaii Revised Statutes, soil erosion and sediment control;
- (6) Chapter 183, Hawaii Revised Statutes, forest reserves, water development, and zoning;
- (7) Chapter 183D, Hawaii Revised Statutes, wildlife;
- (8) Chapter 184, Hawaii Revised Statutes, state parks and recreation areas;

- (9) Chapter 195, Hawaii Revised Statutes, natural area reserves system;
- (10) Chapter 195D, Hawaii Revised Statutes, conservation of aquatic life, wildlife, and land plants;
- (11) Chapter 198D, Hawaii Revised Statutes, Hawaii statewide trail and access system;
- (12) Chapter 205, Hawaii Revised Statutes, land use commission;
- (13) Chapter 205A, Hawaii Revised Statutes, coastal zone management;
- (14) Chapter 341, Hawaii Revised Statutes, environmental quality control;
- (15) Chapter 342B, Hawaii Revised Statutes, air pollution;
- (16) Chapter 342D, Hawaii Revised Statutes, water pollution;
- (17) Chapter 342E, Hawaii Revised Statutes, nonpoint source pollution management and control;
- (18) Chapter 342F, Hawaii Revised Statutes, noise pollution;
- (19) Chapter 343, Hawaii Revised Statutes, environmental impact statements; and
- (20) Chapter 344, Hawaii Revised Statutes, state environmental policy.

SECTION 3. The following bridges and projects shall be exempt from the requirements specified under section 2 of this Act:

- (1) Farrington highway, replacement of Maipalaoa bridge, on Oahu;
- (2) Farrington highway, replacement of Makaha bridges numbers 3 and 3A, on Oahu;
- (3) Kalanianaʻole highway, Inoaole stream bridge replacement, in Waimanalo, Oahu;
- (4) Kamehameha highway, Kaipapau stream bridge, on Oahu;
- (5) Hawaii belt road, Umauma stream bridge, on Hawaii;
- (6) Waiehu beach road, Iao stream bridge rehabilitation, vicinity of Wailuku, on Maui;
- (7) Kaumualii highway, Omao bridge rehabilitation, on Kauai;
- (8) Kuhio highway, Kapaia bridge replacement, on Kauai;
- (9) Kamehameha highway, south Kahana stream bridge replacement, on Oahu;
- (10) Hana highway bridge preservation plan and projects, on Maui; and
- (11) Kamehameha Highway, Franklin D. Roosevelt Bridge rehabilitation, on Oahu.

SECTION 4. If the construction of a project granted an exemption under this Act is not completed by June 30, 2017, the governor may authorize in writing before that date the continuation of construction of the project until completion. If so authorized, the project shall continue to be exempt as provided under this Act.

SECTION 5. If any part of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State, the conflicting part of this Act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding shall not affect the operation of the remainder of this Act in its application to the agencies concerned. The rules under this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved July 5, 2012.)

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-9.3, Hawaii Revised Statutes, is amended to read as follows:

~~[[§237-9.3]]~~ General excise tax benefits; denial of tax benefits for failure to properly claim. (a) Notwithstanding any other law to the contrary, a person shall not be entitled to any general excise tax benefit under this chapter unless the person claiming the general excise tax benefit:

- (1) Obtains a license to engage in and conduct business as required under section 237-9; and
- (2) Files the annual general excise tax reconciliation tax return as provided under this chapter or chapter 231 not later than twelve months from the due date prescribed for the return.

(b) The director may require any taxpayer to furnish information to determine the validity of any general excise tax benefit and may adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this section.

(c) The director may waive the denial of the general excise tax benefit under subsection (a) if the failure to comply is due to reasonable cause and not to the wilful neglect of the taxpayer.

(d) The director shall first give written notice to a nonprofit organization to comply with the requirements of this section before imposing a denial of any general excise tax benefit under this chapter, and the organization shall have ninety days from the date of the receipt of the notice to comply with the requirements.

~~[(d)]~~ (e) For purposes of this section[, “general”]:

“General excise tax benefit” means any tax exemption, exclusion of a taxable amount, a reduction from the measure of a tax imposed, a tax deduction, a tax credit, a lower rate of tax, a segregation or division of taxable amounts between multiple taxpayers involved in the same transaction, or any income splitting allowed under this chapter.

“Nonprofit organization” means a corporate entity, association, or other duly chartered entity that is registered with the State and has received a written determination from the Internal Revenue Service that it is exempt under section 501(c)(3), section 501(c)(4), section 501(c)(8), or so much of section 501(c)(2) as applied to title holding entities that turn over their income to organizations that are exempt under section 501(c)(3), section 501(c)(4), or section 501(c)(8) of the Internal Revenue Code.”

SECTION 2. Section 237-41.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The personal liability under this section applies to any officer, member, manager, or other person having control or supervision over amounts of gross proceeds or gross income collected to pay the general excise tax and held in trust under subsection (a), or who is charged with the responsibility for the filing of returns or the payment of general excise tax on gross income or gross proceeds collected and held in trust under subsection (a). The person shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person wilfully fails to pay or to cause to be paid any taxes due from the taxpayer pursuant to this chapter.

This subsection shall not apply to any officer, manager, or other person having control or supervision over amounts of gross proceeds or gross income collected to pay the general excise tax and held in trust under subsection (a), or who is charged with the responsibility for the filing of returns or the payment of general excise tax on gross income or gross proceeds collected and held in trust under subsection (a) for a nonprofit organization.

For purposes of this subsection[, “wilfully”]:

“Nonprofit organization” means a corporate entity, association, or other duly chartered entity that is registered with the State and has received a written determination from the Internal Revenue Service that it is exempt under section 501(c)(3), section 501(c)(4), section 501(c)(8), or so much of section 501(c)(2) as applied to title holding entities that turn over their income to organizations that are exempt under section 501(c)(3), section 501(c)(4), or section 501(c)(8) of the Internal Revenue Code.

“Wilfully fails to pay or to cause to be paid” shall be construed in accordance with judicial interpretations given to similar provisions of the Internal Revenue Code; consistent therewith, the term “wilfully” shall mean a voluntary, intentional violation of a known legal duty.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved July 5, 2012.)

ACT 220

H.B. NO. 2328

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER ESTATE AND GENERATION-SKIPPING TRANSFER TAX

§ -1 **Short title.** This chapter shall be known and may be cited as the Estate and Generation-Skipping Transfer Tax Reform Act.

§ -2 **Definitions.** As used in this chapter:
“Applicable generation-skipping transfer tax rate” means 2.25 per cent multiplied by the inclusion ratio with respect to any property transferred in a generation-skipping transfer as determined under section 2642 of the Internal Revenue Code.

“Decedent” means a deceased individual owning property in the State.

“Department” means the department of taxation.

"Federal estate tax" means the tax due to the United States with respect to a taxable transfer under chapter 11 of the Internal Revenue Code.

"Federal generation-skipping transfer tax" means the tax due to the United States with respect to a taxable transfer under chapter 13 of the Internal Revenue Code.

"Federal return" means the federal estate tax return with respect to the federal estate tax and means the federal generation-skipping transfer tax return with respect to the federal generation-skipping transfer tax.

"Federal taxable estate" means the gross estate less allowable deductions, as determined under chapter 11 of the Internal Revenue Code.

"Federal transfer tax" means the federal estate tax or the federal generation-skipping transfer tax.

"Generation-skipping transfer" means a generation-skipping transfer as defined and used in section 2611 of the Internal Revenue Code.

"Gross estate" means gross estate as defined and used in sections 2031 to 2046 of the Internal Revenue Code.

"Hawaii estate tax" means the tax due to the State with respect to a taxable transfer, unless the context clearly indicates otherwise.

"Hawaii generation-skipping transfer tax" means the tax due to the State with respect to a taxable transfer that gives rise to a federal generation-skipping transfer tax.

"Hawaii net taxable estate" means Hawaii taxable estate less the applicable exclusion amount as set forth in section -6.

"Hawaii transfer tax" means the Hawaii estate tax or the Hawaii generation-skipping transfer tax.

"Nonresident" means a decedent who was not domiciled in the State at time of death.

"Nonresident trust" means a trust other than a resident trust as defined in this section.

"Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof.

"Personal representative" means the personal representative of a decedent appointed under chapter 560, and includes an executor as defined under section 2203 of the Internal Revenue Code, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

"Property" means property included in the gross estate.

"Qualified heir" means a qualified heir as defined in section 2032A(e)(1) of the Internal Revenue Code.

"Release" means a document issued by the department that certifies that all taxes have been paid or the estate is released from all taxes due under this chapter.

"Resident" means a decedent who was domiciled in the State at the time of death.

"Resident trust" means a resident trust as defined under section 235-1; or if the administration is partly carried on in the State and partly outside the State, a trust where one-half or more of the fiduciaries reside in the State.

"Situs" means, with respect to a decedent not a resident or citizen of the United States, the location of the decedent's property within the meaning of section 2104 of the Internal Revenue Code, including regulations and other guidance issued thereunder, substituting "Hawaii" for "the United States".

“State” means any state or territory of the United States and the District of Columbia.

“Transfer” or “taxable transfer” means:

- (1) A transfer as used in section 2001(a) of the Internal Revenue Code and shall include the disposition of or failure to use property for a qualified use under section 2032A(c) of the Internal Revenue Code; or
- (2) A generation-skipping transfer as defined and used in section 2611 of the Internal Revenue Code; provided that a direct skip that is a transfer subject to the tax imposed by chapter 12 of the Internal Revenue Code shall not be treated as a taxable transfer.

“Transferee” means a transferee within the meaning of sections 2603(a)(1) and 6901(h) of the Internal Revenue Code.

“Transferred property” means:

- (1) With respect to a taxable transfer subject to the federal estate tax, the deceased individual’s gross estate as defined in section 2031 of the Internal Revenue Code;
- (2) With respect to a taxable transfer occurring as a result of a taxable termination as defined in section 2612(a) of the Internal Revenue Code, the taxable amount determined under section 2622(a) of the Internal Revenue Code;
- (3) With respect to a taxable transfer occurring as a result of a taxable distribution as defined in section 2612(b) of the Internal Revenue Code, the taxable amount determined under section 2621(a) of the Internal Revenue Code;
- (4) With respect to a taxable transfer occurring as a result of a direct skip, as defined in section 2612(c) of the Internal Revenue Code, the taxable amount determined under section 2623 of the Internal Revenue Code; and
- (5) With respect to an event which causes the imposition of an additional federal estate tax under section 2032A(c) of the Internal Revenue Code, the qualified real property that was disposed of or which ceased to be used for the qualified use, within the meaning of section 2032A(c)(1) of the Internal Revenue Code.

§ -3 Conformance to the Internal Revenue Code; general application.

For all decedents dying after January 25, 2012, as used in this chapter, “Internal Revenue Code” means subtitle B of the federal Internal Revenue Code of 1986, as amended as of December 31, 2011, as it applies to the determination of gross estate, adjusted gross estate, federal taxable estate, and generation-skipping transfers, except those provisions of the Internal Revenue Code and federal public laws that, pursuant to this chapter, do not apply or are otherwise limited in application.

§ -4 Administration, adoption, and interrelationship of Internal Revenue Code and federal public laws with this chapter. (a) Reference in provisions of the Internal Revenue Code that are operative in this State to provisions in the Internal Revenue Code that are not operative in this State shall be considered inoperative for the purposes of determining the gross estate, federal taxable estate, and generation-skipping transfers; provided that:

- (1) References to time limits and other administrative provisions in subtitle F (sections 6001 to 7874) of the Internal Revenue Code contained in operative sections of the Internal Revenue Code shall be deemed references to applicable provisions of this chapter or chap-

ter 231 or 232, and in the absence of applicable provisions in this chapter or chapter 231 or 232, then to rules adopted by the director of taxation under subsection (b);

- (2) If inoperative provisions of the Internal Revenue Code have been codified in this chapter, the references shall be deemed references to the codified provisions in this chapter. Transitory and savings provisions in federal public laws amending sections of the Internal Revenue Code operative in this chapter shall be operative for the purposes of this chapter. Provisions in this chapter or chapter 231 or 232 in conflict with the Internal Revenue Code or transitory or savings provisions in federal public law shall control; and
- (3) Retroactive and prospective provisions in federal public laws amending sections of the Internal Revenue Code operative in this chapter affecting taxable years beginning or ending before December 31, 2011, shall be operative for the purposes of this chapter.

(b) The director of taxation may adopt the rules and regulations promulgated by the United States Secretary of Treasury or a delegate of the Secretary relating to the provisions of subtitle B of the Internal Revenue Code operative in this chapter and any administrative provisions of subtitle F, sections 6001 to 7874, of the Internal Revenue Code not in conflict with or similar to provisions contained in this chapter or chapter 231 or 232 either by reference or by setting them forth in full; provided that any rule adopted pursuant to this subsection shall be adopted pursuant to chapter 91.

(c) The department shall submit to the legislature, no later than twenty days prior to the convening of each regular session, proposed legislation to amend section -3 and any other sections and subsections of this chapter as may be necessary to adopt the Internal Revenue Code as it exists on the December 31 preceding the regular session. In submitting the proposed legislation, the department may provide that certain amendments made to the Internal Revenue Code by Congress during the preceding calendar year shall not be operative in this State or shall be limited in their operation. The department shall also prepare a digest and explanation of the amended provisions of the Internal Revenue Code recommended for operation, as well as those provisions that are recommended to be limited in their operation, or that are not recommended for operation, and shall submit with the proposed legislation required by this subsection the digest, explanation, and a statement of revenue impact of the adoption of the proposed legislation. In preparing the proposed legislation, digest, and explanation, the department may request the assistance of the legislative reference bureau.

It is the intent of the legislature to adopt all amendments made to the Internal Revenue Code during the calendar year preceding each regular session; provided that the legislature may choose to adopt none of the amendments to the Internal Revenue Code or may provide that certain amendments are limited in their operation.

All provisions of the Internal Revenue Code referred to in this chapter that apply to a husband and wife, spouses, or persons in a legal marital relationship shall be deemed to apply in this chapter to partners in a civil union with the same force and effect as if they were "husband and wife", "spouses", or other terms that describe persons in a legal marital relationship.

§ -5 Legislative intent; application of Internal Revenue Code. (a) It is the intent of this chapter, in addition to the essential purpose of raising revenue, to conform the estate and generation-skipping transfer tax law of the State as closely as possible to the Internal Revenue Code, in order to simplify the filing of returns and minimize the taxpayers' burdens in complying with the estate

and generation-skipping transfer tax law. The rules and regulations, forms, and procedures adopted and established under this chapter shall conform as nearly as possible, unless there is good reason to the contrary, to the rules and regulations, forms, and procedures adopted and established under the Internal Revenue Code.

(b) The Internal Revenue Code, so far as made operative by this chapter, is a statute adopted and incorporated by reference. The Internal Revenue Code shall be applied using changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effectuate the intent of this section. References to the following terms in the Internal Revenue Code shall have the following meanings:

- (1) "Secretary or his delegate" means the director of taxation or the director's duly authorized subordinates; and
- (2) "Interest at the underpayment rate" or "interest at the overpayment rate" means the interest rate set forth in section 231-39(b)(4) or section 231-23(d)(1), as the case may be.

§ -6 Applicable exclusion amounts. (a) An exclusion from a Hawaii taxable estate shall be allowed to the estate of every decedent against the tax imposed by section -8. For the purpose of this section, the applicable exclusion amount is the same as the federal applicable exclusion amount, or the exemption equivalent of the unified credit, without reduction for taxable gifts, as set forth for the decedent in chapter 11 of the Internal Revenue Code as further adjusted below:

- (1) For residents, 100 per cent of the applicable exclusion amount;
 - (2) For nonresidents, an amount computed by multiplying the applicable exclusion amount by a fraction, the numerator of which is the value of the property in the State subject to tax under this chapter, and the denominator of which is the federal gross estate; and
 - (3) For nonresidents who are not citizens, an amount computed by multiplying the exemption equivalent of the unified credit by a fraction, the numerator of which is the value of the property in the State subject to tax under this chapter, and the denominator of which is the federal gross estate.
- (b)(1) For the purposes of this chapter, every decedent having property in the State shall be presumed to have died a resident of the State. The burden of proof in an estate tax proceeding shall be upon any decedent's estate claiming exemption from the tax imposed by this chapter by reason of the decedent's alleged nonresidency;
- (2) Any person required to make and file a tax return under this chapter, who believes that the decedent died a nonresident of the State, may file a request for determination of domicile in writing with the department, stating the specific grounds upon which the request is founded, provided:
 - (A) The person has filed the return required under this chapter;
 - (B) At least two hundred seventy days, but no more than three years, have elapsed since the due date of the return or, if applicable, the extended due date of the return;
 - (C) The person has not been notified, in writing, by the department that a written agreement of compromise with the taxing authorities of another jurisdiction, under section -24, is being negotiated; and
 - (D) The department has not previously determined whether the decedent died a resident of the State;

- (3) Not later than one hundred eighty days following receipt of a request for determination, the department shall determine whether the decedent died a resident or a nonresident of the State. If the department commences negotiations over a written agreement of compromise with the taxing authorities of another jurisdiction after a request for determination of domicile is filed, the one hundred eighty day period shall be tolled for the duration of the negotiations. If, before the expiration of the one hundred eighty day period, both the department and the person required to make and file a tax return under this chapter have consented in writing to the making of a determination after such time, the determination may be made at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements; provided that the agreements are made in writing before the expiration of the period previously agreed upon;
- (4) The department shall mail notice of the proposed determination to the person required to make and file a tax return under this chapter. The notice shall briefly set forth the department's findings of fact and the basis of decision in each case decided adversely to the person. Sixty days after the date on which it is mailed, a notice of proposed determination shall constitute a final determination, unless the person required to make and file a tax return under this chapter has filed an appeal of the determination as provided in section -18; and
- (5) Nothing in this subsection shall be construed to relieve any person filing a request for determination of domicile of the obligation to pay the correct amount of tax on or before the due date of the tax.

§ -7 Hawaii taxable estate. For the purposes of this chapter, "Hawaii taxable estate" means:

- (1) For residents, the federal taxable estate under section 2051, et seq., of the Internal Revenue Code but without regard for the deduction for state death taxes paid under section 2058 of the Internal Revenue Code;
- (2) For nonresidents, the federal taxable estate under section 2051, et seq., of the Internal Revenue Code, but without regard for the deduction for state death taxes paid under section 2058 of the Internal Revenue Code, multiplied by a fraction, the numerator of which is the value of the property in the State subject to tax under this chapter, and the denominator of which is the federal gross estate; and
- (3) For nonresidents not citizens, the federal taxable estate determined under section 2106 of the Internal Revenue, but without regard for the deduction for state death taxes paid under section 2106(a)(4) of the Internal Revenue Code, multiplied by a fraction, the numerator of which is the value of the property with a situs in the State subject to tax under this chapter, and the denominator of which is the federal gross estate.

§ -8 Tax imposed; credit for tax paid other state. (a) A state tax return shall be filed in the case of every decedent whose estate is required by the laws of the United States to file a federal estate tax return. This section shall apply to a decedent who, at the time of death was:

- (1) A resident of the State; or

- (2) A nonresident of the State whose gross estate includes any real property situated in the State or tangible personal property having a situs in the State.

(b) With respect to the estates of decedents dying after January 25, 2012, the tax based on the Hawaii net taxable estate shall be as provided in the following schedule:

If the Hawaii net taxable estate is:	The tax shall be:
\$1,000,000 or less	10.0% of the Hawaii net taxable estate
Over \$1,000,000 but not over \$2,000,000	\$100,000 plus 11.0% of the amount by which the Hawaii net taxable estate exceeds \$1,000,000
Over \$2,000,000 but not over \$3,000,000	\$210,000 plus 12% of the amount by which the Hawaii net taxable estate exceeds \$2,000,000
Over \$3,000,000 but not over \$4,000,000	\$330,000 plus 13% of the amount by which the Hawaii net taxable estate exceeds \$3,000,000
Over \$4,000,000 but not over \$5,000,000	\$460,000 plus 14% of the amount by which the Hawaii net taxable estate exceeds \$4,000,000
Over \$5,000,000	\$600,000 plus 15.7% of the amount by which the Hawaii net taxable estate exceeds \$5,000,000.

(c) If any property of a resident is subject to a death tax imposed by another state and if the tax imposed by the other state is not qualified by a reciprocal provision allowing the property to be taxed in the state of the decedent's domicile, the amount of the tax due under this section shall be credited with the lesser of:

- (1) The amount of the death tax actually paid to the other state; or
- (2) An amount computed by multiplying the Hawaii estate tax by a fraction, the numerator of which is the value of the property subject to the death tax imposed by the other state, and the denominator of which is the total value of the decedent's gross estate.

(d) Except as otherwise expressly provided, for purposes of this chapter, the gross value of transferred property shall be its value as finally determined for purposes of the federal transfer tax.

§ -9 Returns; time to file return and pay tax. (a) The Hawaii transfer tax return, including any supplemental or amended return, is required to be

filed pursuant to this chapter whenever a federal estate tax return or applicable generation-skipping transfer tax return is required to be filed. The return shall be filed, and the Hawaii transfer tax, including any additional tax that may become due, shall be paid by the same person or persons, respectively, who are required to pay the federal transfer tax and file the federal return, including any duly authorized executor or administrator. If there is more than one executor or administrator, the return shall be made jointly by all. If there is no executor or administrator appointed, qualified, and acting, each person in actual or constructive possession of any property of the decedent is constituted an executor for purposes of the tax and shall make and file a return. If in any case the executor is unable to make a complete return as to any part of the gross estate, the executor shall provide all the information available to the executor with respect to the property, including a full description and the name of every person holding a legal or beneficial interest in the property. If the executor is unable to make a return as to any property, each person holding a legal or equitable interest in the property shall, upon notice from the department, make a return as to that part of the gross estate.

(b) The executed Hawaii transfer tax return shall be filed with the department on or before the date the federal estate tax return or applicable generation-skipping transfer tax return is required to be filed, including any extension of time for filing the federal estate tax return or applicable generation-skipping transfer tax return.

(c)(1) The personal representative, without assessment, notice, or demand, shall pay any tax due thereon to the department on or before the date fixed for filing the return, out of any moneys belonging to the estate in the personal representative's hands; and

(2) The personal representative shall have the same powers and duties with respect to the raising of funds for the payment of the tax as conferred upon an executor under sections 2205, 2206, 2207, 2207A, and 2207B of the Internal Revenue Code, and pursuant to the laws of the State in the case of raising funds for the payment of a decedent's debts generally. Any provision in a decedent's will or revocable trust in which a decedent effectively waives a right of recovery under a section of the Internal Revenue Code specified in this paragraph shall be deemed a waiver of the corresponding right of recovery under this section, unless the will or revocable trust specifically states otherwise.

(d) For the purposes of this chapter, the timely filing of any tax return, claim, statement, report, or other document required or authorized to be filed with, or the timeliness of any payment made to, the department and any notice required or authorized to be given by the department shall be governed by chapter 231.

(e) If any portion of the federal transfer tax is deferred or to be paid in installments under the provisions of the Internal Revenue Code, the portion of the Hawaii transfer tax that is subject to deferral or payable in installments shall be determined by multiplying the Hawaii transfer tax by a fraction, the numerator of which is the gross value of the assets included in the transferred property having a tax situs in the State and that give rise to the deferred or installment payment under the Internal Revenue Code, and the denominator of which is the gross value of all assets included in the transferred property having a tax situs in the State.

Deferred payments and installment payments, with interest, shall be paid at the same time and in the same manner as payments of the federal transfer tax are required to be made under the applicable sections of the Internal Revenue

Code; provided that the rate of interest on unpaid amounts of Hawaii transfer tax shall be determined under this chapter.

Acceleration of payment under this section shall occur under the same circumstances and in the same manner as provided in the Internal Revenue Code.

(f) No return shall be required to be filed unless a federal estate tax return or applicable generation-skipping transfer tax return is required to be filed.

§ -10 Interest on amount due; penalties. (a) Any tax due under this chapter that is not paid by the time prescribed for the filing of the return as provided in section -9, not including any extension with respect to the filing of the report or the payment of the tax, shall bear interest at the rate in section 231-39(b)(4) from the date any tax is due until paid.

(b) If the return provided for in section -9 is not filed within the time period specified, unless it is shown that the failure to file is due to a reasonable cause, then there shall be paid, in addition to the interest provided in this section, a penalty equal to five per cent of the tax due in respect to the transfer, or five per cent of the additional tax due in the case of a supplemental return, for each month beyond the time periods that the return has not been filed; provided that no penalty so imposed shall exceed a total of twenty-five per cent of the tax.

(c) If the Internal Revenue Service waives the penalty provided in the Internal Revenue Code for failure to timely file the federal return or the penalty for failure to timely pay the federal transfer tax liability, the waiver shall be deemed to constitute reasonable cause for the purposes of this section.

§ -11 Extension of time to file return. If the date for filing the federal return or the date for payment of the federal transfer tax is extended by the Internal Revenue Service, the filing of the return and payment of the tax imposed by this chapter shall be due on the respective dates specified by the Internal Revenue Service in granting a request for extension. If the request for extension is granted by the Internal Revenue Service, the person required to file the Hawaii transfer tax return shall file along with the return required under this chapter a copy of the request for extension showing approval of the extension by the Internal Revenue Service. If a request for extension of time to file the federal return is denied by the Internal Revenue Service, no penalty shall be due under this chapter if the return required by this chapter is filed within the time specified by the Internal Revenue Service for filing the federal return. If a request for extension of time to pay the federal transfer tax is denied by the Internal Revenue Service, no penalty shall be due under this chapter if the tax is paid within the time specified by the Internal Revenue Service for paying the federal transfer tax. The extension shall be made by filing a true copy of the federal extension or extensions of time for filing or payment, or both, with the return required under section -9.

§ -12 Department to issue release; final settlement of account. (a) The department shall issue an automatic release of estate tax liability to the personal representative when:

- (1) No estate tax is imposed by this chapter and upon the receipt of a request for a release, if the release includes the sworn statement of the personal representative or agent that in fact no taxes are due; or
- (2) The estate taxes due under this chapter have been paid as prescribed in section -9, and the request for a release includes the sworn state-

ment of the personal representative that in fact all taxes due have been paid.

(b) The obtaining of a release shall confer upon the personal representative sufficient authority to effectuate the transfer of all property composing the decedent's estate.

§ -13 Amended returns; final determination. If the amount of the federal taxable estate reported on an estate's federal estate tax return is changed or corrected by the Internal Revenue Service, the person required to make and file the estate tax return under this chapter shall provide notice of the change or correction to the department by filing, within ninety days after the final determination of the change or correction, or as otherwise required by the department, an amended return under this chapter, and shall furnish to the department any information, schedules, records, documents or papers relating to the change or correction. The time for filing the return may be extended by the department upon a showing of due cause. If an additional tax under this chapter is required to be paid pursuant to the changed or amended return, the person required to pay the tax shall pay the additional tax, together with interest as provided in section -10, at the same time the supplemental or amended return is filed.

§ -14 Administration; rules. The department may adopt rules under chapter 91 to implement this chapter.

§ -15 Sale of property to pay tax; creation of lien. (a) Subject to chapter 560 and section 531-29, as applicable, a personal representative may sell any property necessary to pay the estate taxes due under this chapter. A personal representative may sell any property specifically bequeathed or devised as necessary to pay the proportionate amount of the taxes due on the transfer of the property and the fees and expenses of the sale, unless the legatee or devisee thereof pays the personal representative the proportionate amount of the taxes due.

(b) Unless any estate tax due is sooner paid in full, it shall be a lien upon the gross estate of the decedent for a period of ten years from the date of death, except that any part of the gross estate that is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of the lien. Liens created under this subsection shall be qualified as follows:

- (1) The limitation period, as described in this subsection, in each case shall be extended for a period of time equal to the period of pendency of litigation of questions affecting the determination of the amount of tax due; provided that a lis pendens has been filed with the bureau of conveyances or land court in the county in which the property is located;
- (2) Any part of the gross estate that is transferred to a bona fide purchaser shall be divested of the lien and the lien shall be transferred to the proceeds arising out of the transfer; and
- (3) A mortgage on property pursuant to an order of court for payment of charges against the estate and expenses of administration shall constitute a lien upon the property prior and superior to the tax lien.

§ -16 Liability for failure to pay tax before distribution or delivery. (a) Any personal representative who distributes any property without first paying, securing another's payment of, or furnishing security for payment of the estate taxes due under this chapter shall be personally liable for the taxes due to the

extent of the value of any property that may come or may have come into the possession of the personal representative. Security for payment of the estate taxes due under this chapter shall be in an amount not less than the value of all property that is or has come into the possession of the personal representative, as of the time the security is furnished.

(b) Any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent outside the State without first paying, securing another's payment of, or furnishing security for payment of the estate taxes due under this chapter shall be liable for the taxes to the extent of the value of the property delivered. Security for payment of the estate taxes due under this chapter shall be in an amount not less than the value of all property delivered to the personal representative or legal representative of the decedent outside the State by the person.

(c) For the purposes of this section, a person does not have control, custody, or possession of a decedent's property, if the person is not responsible for paying the tax due under this section.

For the purposes of this subsection, "person" may include but is not limited to a stockbroker or stock transfer agent, bank or other depository of checking and savings account, safe-deposit company, or life insurance company.

(d) For the purposes of this section, any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent may rely upon the release furnished by the department to the personal representative as evidence of compliance with the requirements of this chapter, and make any delivery and transfer as the personal representative may direct without being liable for any estate taxes due under this chapter.

§ -17 Generation-skipping transfers; tax imposed. (a) A Hawaii generation-skipping transfer tax is imposed on every taxable transfer involving:

- (1) Transferred property located in the State; and
- (2) Transferred property from a resident trust.

(b) The tax shall be the applicable generation-skipping transfer tax rate multiplied by the taxable amount as determined under chapter 13 of the Internal Revenue Code, multiplied by a fraction, the numerator of which is the taxable transfer subject to the tax under subsection (a) and the denominator of which is the total amount of taxable transfers subject to the federal generation-skipping transfer tax.

(c) The person required to report and pay the federal generation-skipping transfer tax shall file with the department on or before the date the federal generation-skipping transfer tax return is required to be filed, including any extension of time for filing the federal return:

- (1) A report for the generation-skipping transfer tax due under this section; and
- (2) A true copy of the federal generation-skipping transfer tax return.

(d) If the person required to file the return has obtained an extension of time for filing the federal return, the filing required by subsection (c) shall be extended similarly until the end of the time period granted in the extension of time for the federal return. A true copy of the extension shall be filed with the department along with the report required under subsection (c).

(e) If a taxable transfer subject to the Hawaii generation-skipping transfer tax is subject to a generation-skipping transfer tax imposed by another state and if the tax imposed by the other state is not qualified by a reciprocal

provision allowing the property to be taxed in this State, the amount of the tax due under this section shall be credited with the lesser of:

- (1) The amount of the generation-skipping transfer tax actually paid the other state; or
- (2) An amount computed by multiplying the Hawaii generation-skipping transfer tax by a fraction, the numerator of which is the taxable transfer subject to the generation-skipping transfer tax imposed by the other state, and the denominator of which is the total amount of the taxable transfers subject to the federal generation-skipping transfer tax.

(f) For the purposes of this section, the term "trust" includes a trust as defined in section 2652(b)(1) of the Internal Revenue Code.

§ -18 Administration by department; action for collection of tax; appeal.

The department may collect the taxes provided for in this chapter, including applicable interest and penalties, and shall represent the State in all matters pertaining to this chapter, before any court or in any other manner. The department, through the attorney general, may institute proceedings for the collection of the taxes and any interest and penalties on the taxes.

The circuit court for any county that has assumed lawful jurisdiction over the property of the decedent for general probate or administration purposes under the laws of the State shall have jurisdiction to hear and determine all questions in relation to the Hawaii estate tax arising under this chapter. If there are no probate or administration proceedings in any court of the State, the following court shall have jurisdiction:

- (1) If the decedent was a resident, the circuit court for the county in which the decedent was a resident; or
- (2) If the decedent was a nonresident, any court that has jurisdiction over the property of the decedent, the transfer of which is taxable, to issue probate or administration proceedings thereon, had the same been justified by the legal status of the property or had the same been applied for.

Any court first acquiring jurisdiction shall retain the same to the exclusion of every other. The tax appeal court shall have jurisdiction to hear and determine all questions in relation to the generation-skipping transfer tax arising under this chapter.

Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment to a court of competent jurisdiction within the time set forth in section 235-114. The distribution of taxes paid pending the appeal shall be as provided in chapter 232.

§ -19 Parent as natural guardian for purposes of sections 2032A and 2057 of the Internal Revenue Code. A parent, without being appointed guardian of the person or conservator of the estate, or a conservator of the estate, or, if no conservator of the estate has been appointed, a guardian of the person, of any minor or disabled person whose interest is not adverse to the minor or disabled person, may make any election and sign, without court approval, any agreement on behalf of the minor or disabled person under:

- (1) Section 2032A of the Internal Revenue Code for the valuation of property under that section; or
- (2) Section 2057 of the Internal Revenue Code relating to deduction of the value of certain property under that section.

Any election so made, and any agreement so signed, shall have the same legal force and effect as if the election had been made and the agreement had been

signed by the minor or disabled person and the minor or disabled person had been legally competent.

§ -20 Reimbursement. If a person who pays the Hawaii transfer tax arising from a taxable transfer is entitled under the Internal Revenue Code or any other state or federal statute or rule of law to reimbursement of a portion of the federal transfer tax from any other person who has received transferred property, then, unless the governing document directs otherwise, the person who paid the Hawaii transfer tax shall be entitled to reimbursement from that other person of a portion of the Hawaii transfer tax. The amount of reimbursement shall be determined by multiplying the total Hawaii transfer tax by a fraction, the numerator of which shall be the gross value of the transferred property received by that other person and having a tax situs in the State that gives rise to a right of reimbursement of the federal transfer tax, and the denominator of which shall be the gross value of all transferred property having a tax situs in the State.

§ -21 Statute of limitations; claims for refund. (a) If the amount paid with respect to any taxable transfer is less than the amount due under this chapter, the department shall assess the underpayment from the person responsible for payment; provided that a proceeding to assess the underpayment amount shall commence within:

- (1) Three years from the date the federal estate tax return was filed; or
- (2) One year after the date of final determination of the related federal transfer tax,

whichever is later.

Amounts set forth on a duly filed and accepted federal return for valuations of property, the gross estate, federal taxable estate, and applicable exclusion amount shall be conclusive for purposes of this chapter, and the return required under this chapter shall use the same amounts as the corresponding amounts on the federal return.

(b) If the amount paid with respect to any taxable transfer is more than the amount due under this chapter, the department shall refund the excess to the person entitled to the refund together with interest at the existing statutory rate of interest in the manner provided in section 231-23; provided that no amount shall be refunded unless application for the refund is filed with the department within:

- (1) One year after the last date allowable under the Internal Revenue Code for filing a claim for refund of any part of the related federal transfer tax; or
- (2) One year after the date of final determination of the related federal transfer tax,

whichever is later.

As to all tax payments for which a refund or credit is not authorized by this section, including, without prejudice to the generality of the foregoing, cases of unconstitutionality, the remedies provided by appeal or by section 40-35 are exclusive.

§ -22 Expenses of court proceeding. Whenever a circuit court certifies that probable cause exists for issuing a citation and taking proceedings under this chapter, the director of finance shall pay from the tax reserve fund provided in section 231-23(c)(2), or allow all expenses incurred for services of citation and other lawful disbursements that have not otherwise been paid.

§ -23 Who liable; amount. In addition to the amount of tax determined to be due under this chapter, every person who fails or refuses to perform, within a reasonable time, any duty required by this chapter, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this chapter, shall forfeit to the State the additional sum of \$10,000, to be recovered in an action brought by the attorney general in the name of the State.

§ -24 Agreements with other states for payment of tax imposed by this chapter. Where the department claims that transferred property has a tax situs in this State and the taxing authority of any other state claims the same transferred property is subject to a transfer tax in the other state, the department may enter into a written agreement with the taxing authority in the other state and with the person required to file the Hawaii transfer tax return or pay the Hawaii transfer tax that a certain sum shall be accepted in full payment of the tax imposed by this chapter; provided that the agreement also fixes the amount to be paid in full payment to the other state. The person required to file the Hawaii transfer tax return or pay the Hawaii transfer tax shall be authorized to enter into the agreement provided for in this section.

§ -25 Disclosure of federal return information. When receipt of estate tax information from the Internal Revenue Service under section 6103(d) of the Internal Revenue Code discloses possible Hawaii estate tax liability, any person possessing federal estate tax information shall be required to submit the information to the department upon request to enable the department to audit the return or Internal Revenue Service audit adjustments and to determine whether any tax, penalty, or interest is due the State where such return information has not been filed with the department. A claim of confidentiality shall not prohibit the dissemination of tax information required under this section and shall not constitute grounds for failing or refusing to surrender the tax information to the department in the administration and enforcement of this chapter. Any tax information submitted in compliance with this section shall be treated and afforded with the same confidentiality as a return filed under section 235-116.

§ -26 Disposition of revenues. All moneys collected under this chapter shall be state realizations, to be kept and accounted for as provided by law."

SECTION 2. This part does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Chapter 236D, Hawaii Revised Statutes, shall not apply to decedents dying or taxable transfers occurring after January 25, 2012.

PART II

SECTION 4. In 2007, the legislature enacted Act 166, which provides an income tax exemption of one hundred per cent of capital gains realized during taxable years 2008-2012 from sales of leased fee interest in condominium units to association of apartment owners or residential cooperative corporations. The purpose of the law is to encourage landowners to sell condominium lessees the fee interest in their units, and thereby promote the long-term stability in Hawaii's condominium housing market. Act 166, Session Laws of Hawaii 2007, sunsets on December 31, 2012.

Between the years 2012-2015, the lease terms of more than one thousand two hundred fifty condominium units in the urban district of Honolulu will expire, with lease terms of over one hundred units on the island of Hawaii expiring in 2015. Extending Act 166, Session Laws of Hawaii 2007, for an additional five years through 2017 will provide landowners and condominium lessees with a tool that encourages long-term home ownership.

SECTION 5. Act 166, Session Laws of Hawaii 2007, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon approval, and shall apply to taxable years beginning after December 31, 2007, and ending prior to January 1, [2013;] 2018; provided that on January 1, [2013;] 2018, this Act shall be repealed and section 235-7(a), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.”

PART III

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2012; provided that part I shall apply to decedents dying or taxable transfers occurring after January 25, 2012.

(Approved July 5, 2012.)

ACT 221

H.B. NO. 2290

A Bill for an Act Relating to Children and Youth.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 8-11, Hawaii Revised Statutes, is amended to read as follows:

“§8-11 Children and Youth Day and Month. (a) The first Sunday in October shall be known and designated as “Children and Youth Day”, and the entire month of October shall be known and designated as “Children and Youth Month”. This day and month are not and shall not be construed to be state holidays.

(b) Unless otherwise determined by the governor, public events celebrating children and youth may be held in the area of the state capitol, including on and around its grounds, as follows:

- (1) Celebrations of Children and Youth Day may be held on the first Sunday of October; and
- (2) Public events, such as the Children and Youth Summit, which may be held in the month of October.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 5, 2012.)

A Bill for an Act Relating to the Department of Accounting and General Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In March 2011, the State launched an initiative to modernize and transform the State's technology infrastructure, systems, processes, and procedures. The State subsequently hired its first full-time chief information officer in July 2011 to oversee the development and implementation of a statewide information technology strategic plan. In September 2011, the first phase of the State's modernization initiative was completed with the publishing of the "Baseline of Information Management and Technology and Comprehensive View of State Services" report. The findings and recommendations in this report provide the basis for the strategic direction that the State needs to take going forward. The development of the statewide information technology strategic plan, which will include a business transformation strategy, is currently under development and is anticipated to be delivered by the chief information officer in July 2012.

The report explains that the State's budget reductions over the last decade and lack of centralized governance of information technology and information resource management have resulted in minimal integration of business processes between departments, duplication of efforts and redundant processes, and aging legacy systems. Further, the State's current level of investment in information technology and information resource management is inadequate compared to benchmark standards found in other states and existing best practices.

It is recognized that technology alone cannot address the State's needs; simply automating obsolete or stove-piped processes will not lead to better outcomes. What is required is a re-thinking of the existing business processes throughout state government, in every department, in order to take full advantage of the transformation capabilities modern technology offers. It is the chief information officer's and business transformation executive's intention to embark upon a prioritized enterprise-wide re-evaluation of business processes and their enabling technologies in order to advance Hawaii to a more agile, responsive, and transparent future state.

The re-thinking of business processes and the transformation of the State's information technology infrastructure and framework will result in increased efficiencies through greater collaboration and information sharing, improved effectiveness through eliminating redundancies, enhanced levels of information security, future cost savings, and business processes that will more closely align with the business needs of the State. Additionally, the new information technology framework that will be documented in the strategic plan will include an enterprise architecture for the State and will serve as the basis for annual tactical operation plans going forward.

Funding for the defined initiatives resulting from the strategic plan cannot be funded until fiscal year 2013-2014, but there are basic and critical foundational elements that must be implemented in fiscal year 2012-13, in order for the State to realize the greatest benefits of the overall transformation initiative.

The legislature further finds that the public procurement approval process for information technology procurements can often extend over a lengthy period. An expedited procurement approval process to implement the first group of business process reengineering and information technology activities, pilot projects to increase current operational capabilities, and demonstration projects authorized in the Supplemental Appropriations Act of 2012 is essential to meet

key deadlines tied to the fiscal year 2013-2015 biennium budget cycle for implementation of the State's information technology strategic plan.

The purpose of this Act is to expedite implementation of the business reengineering process and technology initiatives as a foundation for the transformation activities proposed in the State's information technology strategic plan by providing a twelve-month, expedited process for information technology projects authorized in the Supplemental Appropriations Act of 2012 under information processing and communication services (AGS 131).

SECTION 2. Beginning July 30, 2012, the state procurement office and the office of information management and technology shall submit monthly reports to the legislature on the status of information technology procurements for authorized projects undertaken by the office of information management and technology to implement the State's information technology strategic plan. Where appropriate, the state procurement officer may approve exemptions for individual procurements that facilitate the immediate deployment of demonstration technology projects authorized in the Supplemental Appropriations Act of 2012 under information and communication services (AGS 131) that will be completed by June 30, 2013.

The office of information management and technology shall also submit a report on the number of information technology procurements completed on an expedited basis, the results achieved in each technology project, as well as recommendations on the feasibility of establishing a new category for information technology procurements within the States procurement laws.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 5, 2012.)

ACT 223

H.B. NO. 1892

A Bill for an Act Relating to the Reapportionment Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 25-1, Hawaii Revised Statutes, is amended to read as follows:

“§25-1 Reapportionment commission. (a) A reapportionment commission shall be constituted before May 1 of each reapportionment year, and the members shall be appointed and certified to hold office until a general election is held under a reapportionment plan of the commission, or of a court of competent jurisdiction, or a new commission is constituted under ~~[Article]~~ article IV, section 2 of the ~~[State Constitution,]~~ state constitution, whichever event shall occur first.

(b) The reapportionment commission shall be placed within the office of elections for administrative purposes only.

(c) In each regular session of the legislature that immediately precedes a reapportionment year, the chief election officer shall request an appropriation that is separate from the office of elections' operating budget and sufficient to enable the commission to carry out its duties, to be effective in the year in which the reapportionment commission is constituted.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 5, 2012.)

ACT 224

H.B. NO. 2266

A Bill for an Act Relating to Information Technology.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 27-43, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) There is established an information technology steering committee to assist the chief information officer in developing the State’s information technology standards and policies, including but not limited to:

- (1) Assisting the chief information officer in developing and implementing the state information technology strategic plans;
- (2) Assessing executive branch departments’ progress in meeting the objectives defined in the state information technology strategic plans and identifying best practices for shared or consolidated services;
- (3) Ensuring technology projects are selected based on their potential impact and risk to the State, as well as their strategic value;
- (4) Ensuring that executive branch departments maintain sufficient tools to assess the value and benefits of technology initiatives;
- (5) Assisting the chief information officer in developing state information technology standards and policies; and
- (6) Clarifying the roles, responsibilities, and authority of the information and communication services division, specifically as it relates to its statewide duties.

The ~~[members of the]~~ information technology steering committee shall ~~consist of eleven members, with four members to be [appointed in equal number]~~ appointed by the senate president ~~[and], four members to be appointed by the~~ speaker of the house of representatives, ~~[respectively,]~~ one member to be appointed by the chief justice, and one member to be appointed by the governor, and shall include representatives from executive branch departments, including large user agencies such as the department of education and the University of Hawaii; the judiciary; the legislature; and private individuals. The chief information officer shall serve as the chair of the committee and shall ensure that the committee is evaluated periodically.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 5, 2012.)

ACT 225

H.B. NO. 1755

A Bill for an Act Relating to Voter Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§11- **Application to register electronically.** (a) Notwithstanding any law to the contrary, the clerk of each county may permit a person who has valid

government-issued identification that is capable of electronic confirmation to submit an application to register to vote electronically in lieu of a traditional signed application by mail or in person.

(b) The electronic application to register to vote shall be substantially similar in content to the application to register pursuant to section 11-15, and shall require the applicant to provide substantially similar information.

(c) The applicant's use of the electronic application to register shall constitute consent for election officials to obtain confirmatory information regarding the applicant from government databases associated with government-issued identification, including the applicant's signature.

(d) The applicant's signature obtained from the government database may be utilized by election officials to validate and confirm a voter's identity in any election-related matter in which a signature is necessary.

(e) The online application system may require additional information from applicants, such as security questions to authenticate any future voter registration transactions by the applicant."

SECTION 2. Section 11-14, Hawaii Revised Statutes, is amended to read as follows:

"§11-14 General county register; restrictions in use. (a) The clerk of each county shall register all the voters in the clerk's county in the general county register. The register shall contain the name and address of each voter unless the voter's address is deemed confidential pursuant to section 11-14.5. Additional information required by section 11-15 may be included in the register at the discretion of the clerk. ~~[The voter's name shall be maintained alphabetically in the register and be capable of segregation by precinct and representative district. The clerk shall keep the original or photographic copy of the affidavit of registration required by section 11-15.]~~ The general county register shall be available for election or government purposes only in accordance with section 11-97.

(b) The affidavits filed under section 11-15 and the general county register may be copied, and the clerk may release voter lists ~~[and tabulating cards or computer tapes containing data furnished in the affidavit;]~~ or data; provided that information furnished in the affidavits ~~[, register, voter lists, cards, or tapes,]~~ shall be copied or released for election or government purposes only in accordance with section 11-97.

(c) Voter registration information that is collected and maintained by the clerk of each county may be transmitted to a central file for the purpose of correlating registration data to prevent or detect duplicate voter registrations and for the compilation of election reports.

~~[(d) The clerk of each county shall maintain records by computer tape or otherwise of office of Hawaiian affairs registered voters to facilitate their identification as a separate category of voters.~~

~~(e)~~ (d) Unless authorized under section 11-97, it shall be unlawful for any person to use, print, publish, or distribute any voter registration information acquired directly or indirectly from the voter registration affidavits or any list prepared therefrom. Any person who is designated by the clerk to register voters and collect voter registration affidavits shall be advised of the provisions of this subsection. Any person who violates this subsection shall be guilty of a misdemeanor."

SECTION 3. Section 11-15, Hawaii Revised Statutes, is amended to read as follows:

“§11-15 Application to register. (a) Any person qualified to and desiring to register as a voter in any county shall make and subscribe to an application in the form of an affidavit.

The affidavit shall contain the following information:

- (1) Name;
- (2) Social security number;
- (3) Date of birth;
- (4) Residence, including mailing address;
- (5) That the residence stated in the affidavit is not simply because of the person's presence in the State, but that the residence was acquired with the intent to make Hawaii the person's legal residence with all the accompanying obligations therein; and
- (6) That the person is a citizen.

An application to register to vote shall include a space to request a permanent absentee ballot.

~~[(b) Any person qualified to and desiring to register as a voter for the election of members of the board of trustees of the office of Hawaiian affairs shall make and subscribe to an application in the form of an affidavit which shall state that the person is Hawaiian and which shall contain the information required under subsection (a). The affidavit shall also apply to all elections, primary, special primary, general, special general, special, or county, held in the State, under all voting systems used within the State, so far as applicable and not inconsistent with this title.~~

(e) (b) The applicant shall swear to the truth of the allegations by self-subscribing ~~[oath]~~ affirmation in the affidavit on application for voter registration or other form prescribed by the chief election officer. Unless contested by a qualified voter, the clerk may accept, as prima facie evidence, the allegation of the applicant in information required in the affidavit in subsection (a)(5) ~~and the allegation of the applicant that the applicant is Hawaiian required in subsection (b)].~~ In any other case where the clerk shall so desire or believe the same to be expedient, the clerk may demand that the applicant furnish substantiating evidence to the allegations of the applicant's application.

~~[(d)]~~ (c) The applicant shall then affix the applicant's signature to the affidavit. In the case where an applicant is unable to write for the reason of illiteracy, blindness, or other physical disability, the applicant's mark shall be witnessed by another person who shall sign the affidavit in the space provided. A voter having once been registered shall not be required to register again for any succeeding election, except as provided in this chapter. Affidavits approved by the clerk shall thereupon be numbered appropriately, filed by the clerk, and kept available for election or government purposes in accordance with procedures established by section 11-97. Approved voter registration transactions conducted through the online voter registration system established pursuant to section 11- shall be assigned a transaction number in a manner that is substantially similar to the numbering of affidavits.

~~[(e)]~~ (d) The clerk may designate a subordinate or subordinates to act in the clerk's place ~~[and stand]~~ in all matters covered by this section, except that no candidate shall be eligible to serve as a subordinate.”

SECTION 4. Section 11-24, Hawaii Revised Statutes, is amended to read as follows:

“§11-24 Closing register~~[-list of voters]~~. (a) At 4:30 p.m. on the thirtieth day prior to each primary, special primary, or special election ~~[(but), but]~~ if the day is a Saturday, Sunday, or holiday then at 4:30 p.m. on the first working day

immediately thereafter[)], the general county register shall be closed to registration for persons seeking to vote at the primary, special primary, or special election and remain closed to registration until after the election, subject to change only as provided in sections 11-21(c), 11-22, 11-25, 11-26, and this section.

(b) Notwithstanding the closing of the register for registration to vote at the primary or special primary election, the register shall remain open for the registration of persons seeking to vote at the general or special general election, until 4:30 p.m. on the thirtieth day prior to the general or special general election [~~but~~, but if the day is a Saturday, Sunday, or holiday then at 4:30 p.m. on the first working day immediately thereafter[)], at the end of which period the general county register shall be closed to registration and remain closed until after the general or special general election next following, subject to change only as provided in sections 11-21(c), 11-22, 11-25, and 11-26.

~~[(c) Immediately upon the closing of the general county register, the clerk shall proceed to prepare a list of all registered voters in each precinct, separately. The list shall contain, in alphabetical order, without designation of the race or age of voters, the names of all voters so registered in each precinct, and the residence of each unless such residence is deemed confidential pursuant to section 11-14.5. The list shall be available for inspection at the office of the county clerk prior to election day. On election day the precinct officials shall post the list at the precinct polling place.]~~

SECTION 5. Section 12-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~“(c) Nomination papers for candidates for members of the board of trustees of the office of Hawaiian affairs shall be signed by not less than twenty-five persons registered [as prescribed under section 11-15(b)] to vote.”~~

SECTION 6. The chief election officer and the clerk of each county shall work collaboratively to study the feasibility of using the last four digits of an individual's social security number, in lieu of using that number in its entirety in voter registration and record keeping, and shall submit a written report of the findings and recommendations and any suggested legislation to the legislature no less than twenty days prior to the convening of the regular session of 2013.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the purpose of planning and designing an online voter registration system. Any remaining funds may be used to implement the online voter registration system.

The sum appropriated shall be expended by the office of elections for the purposes of this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on July 1, 2012; provided that sections 1 through 5 shall apply to all primary, special, nonpartisan, and general elections, beginning with the primary election of 2016.

(Approved July 5, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Uniform Military and Overseas Voters Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM MILITARY AND OVERSEAS VOTERS ACT**

§ -1 **Short title.** This chapter may be cited as the Uniform Military and Overseas Voters Act.

§ -2 **Definitions.** In this chapter:

“Covered voter” means:

- (1) A uniformed-service voter or an overseas voter who is registered to vote in this State;
- (2) An overseas voter who, before leaving the United States, was last eligible to vote in this State and, except for a state residency requirement, otherwise satisfies this State’s voter eligibility requirements;
- (3) An overseas voter who, before leaving the United States, would have been last eligible to vote in this State had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this State’s voter eligibility requirements; or
- (4) An overseas voter who was born outside the United States, is not described in paragraph (2) or (3), and except for a state residency requirement, otherwise satisfies this State’s voter eligibility requirements, if:
 - (A) The last place where a parent or legal guardian of the voter was, or under this chapter would have been, eligible to vote before leaving the United States is within this State; and
 - (B) The voter has not previously registered to vote in any other state.

“Dependent” means an individual recognized as a dependent by a uniformed service.

“Federal postcard application” means the application prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff(b)(2).

“Federal write-in absentee ballot” means the ballot described in Section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff-2.

“Military-overseas ballot” means:

- (1) A federal write-in absentee ballot;
- (2) A ballot specifically prepared or distributed for use by a covered voter in accordance with this chapter; or
- (3) A ballot cast by a covered voter in accordance with this chapter.

“Overseas voter” means a United States citizen who is living outside the United States.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Uniformed service” means:

- (1) Active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;
- (2) The Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or
- (3) The National Guard and state militia.

“Uniformed-service voter” means an individual who is qualified to vote and is:

- (1) A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty;
- (2) A member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States;
- (3) A member on activated status of the National Guard or state militia; or
- (4) A spouse or dependent of a member referred to in this definition.

“United States”, used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

§ -3 Elections covered. The voting procedures in this chapter apply to:

- (1) A general, special, or primary election for federal office;
- (2) A general, special, or primary election for statewide or state legislative office or state ballot measure; and
- (3) A general, special, recall, primary, or runoff election for local government office or local ballot measure conducted under section 11-91.5 for which absentee voting or voting by mail is available for other voters.

§ -4 Role of chief election officer. (a) The chief election officer shall be the state official responsible for implementing this chapter and the State’s responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff et seq.

(b) The chief election officer shall establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information under this chapter. The chief election officer may satisfy the requirements of this chapter by utilizing an electronic transmission system established by the Federal Voting Assistance Program in lieu of creating a separate electronic transmission system.

(c) The chief election officer shall develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this State.

(d) The chief election officer shall accept forms prescribed by the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. section 1973ff et seq., for use by a covered voter that contains the prescribed standard declaration to swear or affirm specific representations pertaining to the voter’s identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot.

§ -5 Overseas voter’s registration address. In registering to vote, an overseas voter who is eligible to vote in this State shall use and be assigned to

the voting district of the person's residence, or the last place of residence prior to leaving this State, or, in the case of a voter described by paragraph (4) of the definition of "covered voter" under section -2, the address of the last place of residence in this State of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter shall be assigned a district for voting purposes.

§ -6 Methods of registering to vote. (a) To apply to register to vote, in addition to any other approved method, a covered voter may use the federal postcard application, or the application's electronic equivalent for all elections conducted in the State.

(b) A covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot, if it is received no later than thirty days prior to the election pursuant to section 11-16.

(c) The chief election officer shall ensure that the electronic transmission system described in section -4(b) is capable of accepting both a federal postcard application and any other approved electronic registration application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to register to vote.

§ -7 Methods of applying for military-overseas ballot. (a) A covered voter who is registered to vote in this State may apply for a military-overseas ballot using the absentee ballot application prescribed in section 15-4, the federal postcard application, or the application's electronic equivalent, as appropriate.

(b) A covered voter who is not registered to vote in this State may use a federal postcard application or the application's electronic equivalent to apply simultaneously to register to vote under section -6 and for a military-overseas ballot.

(c) The chief election officer shall ensure that the electronic transmission system described in section -4(b) is capable of accepting the submission of both a federal postcard application and any other approved electronic military-overseas ballot application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot.

(d) A covered voter may use the declaration accompanying the federal write-in absentee ballot as an application for a military-overseas ballot simultaneously upon its submission if it is received by the appropriate election official by the deadline prescribed under section 15-4.

§ -8 Timeliness and scope of application for military-overseas ballot. An application for a military-overseas ballot shall be timely if received by the request period prescribed under section 15-4. An application for a military-overseas ballot for a primary election, whether or not timely, shall be effective as an application for a military-overseas ballot for the general election and all subsequent elections held before December 31 of that calendar year.

§ -9 Transmission of unvoted ballots. (a) No later than forty-five days before the election or, if the forty-fifth day before the election is a weekend or holiday, no later than the business day preceding the forty-fifth day, the election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.

(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the voter's jurisdiction, internet delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

(c) If a ballot application from a covered voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing a ballot and balloting materials shall transmit them to the voter no later than two business days or as soon as allowable after the application arrives.

§ -10 Receipt of voted ballot. A valid military-overseas ballot shall be counted if it is received by the close of the polls on the day of the election and meets the requirements prescribed under section 15-9.

§ -11 Declaration. A military-overseas ballot shall include or be accompanied by a declaration or affirmation signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury or related offenses under the laws of the United States of this State.

§ -12 Federal write-in absentee ballot. A covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in section -3.

§ -13 Confirmation of receipt of application and voted ballot. The chief election officer, in coordination with local election officials, shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether:

- (1) The voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted; and
- (2) The voter's military-overseas ballot has been received.

§ -14 Use of voter's electronic-mail address. (a) The local election official shall request an electronic-mail address from each covered voter who registers to vote after the effective date of this chapter. An electronic-mail address provided by a covered voter may not be made available to the public or any individual or organization other than an authorized agent of the local election official and is exempt from disclosure under chapter 92F. The electronic-mail address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter's mailing address and physical location.

(b) A covered voter who provides an electronic-mail address may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the calendar year of the date of the application or another shorter period the voter specifies, including for any runoff elections that occur as a result of those elections. An election official shall provide a military-overseas ballot to a voter who makes a standing request for each election to which the request is applicable. A covered voter who is entitled to receive a military-overseas ballot for a primary election under this subsection is entitled to receive a military-overseas ballot for the general election.

§ -15 Publication of election notice. (a) As soon as practicable before an election, an official in each jurisdiction charged with printing ballots and balloting material shall prepare an election notice for that jurisdiction, to be used in conjunction with a federal write-in absentee ballot. The election notice must contain a list of all of the ballot measures and federal, state, and local offices that as of that date the official expects to be on the ballot on the date of the election. The notice may contain specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested.

(b) A covered voter may request a copy of an election notice. The official charged with preparing the election notice shall send the notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

(c) As soon as ballot styles are finalized pursuant to section 11-119, and no later than the date ballots are required to be transmitted to voters under section 15-4, the official charged with preparing the election notice under subsection (a) shall update the notice with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.

(d) A local election jurisdiction that maintains an internet website shall make the election notice prepared under subsection (a) and updated versions of the election notice regularly available on the website.

(e) The chief election officer or clerk in the case of county elections may satisfy the requirements of this section by making available ballot facsimiles or a certified list of candidates and ballot measures available on their respective websites.

§ -16 Prohibition of nonsubstantive requirements. (a) If a voter's mistake or omission in the completion of a document under this chapter does not prevent determining whether a covered voter is eligible to vote, the mistake or omission shall not invalidate the document. Failure to satisfy a nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, shall not invalidate a document submitted under this chapter. In a write-in ballot authorized by this chapter if the intention of the voter is discernible under this State's uniform definition of what constitutes a vote, an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be accepted as a valid vote.

(b) Notarization is not required for the execution of a document under this chapter. An authentication, other than the declaration on the federal postcard application and federal write-in absentee ballot, shall not be required for execution of a document under this chapter. The declaration and any information in the declaration may be compared with information on file to ascertain the validity of the document.

§ -17 Equitable relief. A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with or enforce this chapter on application by:

- (1) A covered voter alleging a grievance under this chapter; or
- (2) The attorney general of the State.

No award of attorney fees or costs shall be permitted in any private cause of action initiated under this chapter.

§ -18 Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that Act, 15 U.S.C. section

7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. section 7003(b).”

SECTION 2. Section 15-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If mailed absentee ballots are not received by the voter within five days of an election, [the] a covered voter under chapter may request that absentee ballots be forwarded by facsimile. Upon receipt of such a request and confirmation that proper application was made, the clerk may transmit appropriate ballots by facsimile together with a form requiring the affirmations and information required by section 15-6, and a form containing a waiver of the right to secrecy, as provided by section 11-137. The voter may return the voted ballots and executed forms by facsimile or mail; provided that they are received by the issuing clerk no later than the close of polls on election day. Upon receipt, the clerk shall verify compliance with the requirements of section 15-9(c), and prepare the ballots for counting pursuant to section 15-10.”

SECTION 3. Section 15-3.5, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved July 5, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 227

S.B. NO. 2939

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist St. Francis Healthcare System of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$80,000,000, in one or more series, for the purpose of assisting St. Francis Healthcare System of Hawaii, a Hawaii nonprofit corporation, to finance the construction, improvement, and equipment of the facilities formerly known as Hawaii Medical Center East that are devoted solely to assisted living services, hospice care, adult day care, or other outpatient services; provided that the issuance of special purpose revenue bonds pursuant to this section shall not be for the purpose of improving or constructing facilities for long-term care or skilled nursing services.

The legislature hereby finds and determines that the activities and facilities of St. Francis Healthcare System of Hawaii constitute a project as defined

in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit corporation that provides health care facilities to the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist a not-for-profit corporation that provides health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2017, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

Such refunding special purpose revenue bonds may be issued in one or more series for the refunding of the special purpose revenue bonds authorized in section 2 of this Act or this section and may be combined into a single issue of refunding special purpose revenue bonds, in one or more series, with refunding special purpose revenue bonds to be issued by the department to refund any other special purpose revenue bonds authorized by any one or more other separate acts of the legislature pursuant to part II, chapter 39A, Hawaii Revised Statutes.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2017.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved July 5, 2012.)

ACT 228

S.B. NO. 2383

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Not-For-Profit Corporations that Provide Health Care Facilities to the General Public.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 176, Session Laws of Hawaii 2003, as amended by Act 86, Session Laws of Hawaii 2007, is amended by amending sections 4 and 5 to read as follows:

“**SECTION 4.** The department of budget and finance is authorized, from time to time, including time subsequent to June 30, ~~[2013,]~~ 2018, to issue special purpose revenue bonds in whatever principal amounts the department of budget and finance shall determine to be necessary to refund the special purpose rev-

enue bonds authorized in section 2 and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department of budget and finance shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, ~~[2013-]~~ 2018.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2013.

(Approved July 5, 2012.)

ACT 229

S.B. NO. 2748

A Bill for an Act Relating to Unclaimed Property.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 523A-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except for property held in a safe deposit box or other safekeeping depository, ~~[within six months after the final date for]~~ upon filing the report required by section 523A-8, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed~~[-but];~~ provided that if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance shall be extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository shall not be delivered to the administrator until an additional one hundred twenty days after the time for payment or delivery to the administrator of property presumed abandoned as required by this subsection.”

SECTION 2. Section 523A-25, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) An agreement covered by this section ~~[which]~~ that provides for compensation that ~~[is unconscionable]~~ exceeds ten per cent of the total value of the property shall be unenforceable except by the owner. An owner who has agreed to pay compensation that ~~[is unconscionable]~~ exceeds ten per cent of the total value of the property, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to ~~[a conscionable]~~ an amount ~~[-]~~ not to exceed ten per cent of the total value of the property. The court may award reasonable attorney’s fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than ~~[unconscionable]~~ excessive or unjust compensation. The court may award reasonable attorney’s fees to an owner who prevails in the action.”

SECTION 3. Section 560:3-1210, Hawaii Revised Statutes, is amended to read as follows:

"§560:3-1210 Undistributed proceeds or balances, disposition. When any balance remains in the hands of the clerk, after payment in the order specified in section 560:3-805, and if no heirs or devisees of the decedent[;] entitled to the balance[;] can be located after reasonable search and inquiry, the clerk, after the expiration of one year after the first publication, shall report the fact to the court[; ~~which~~]. The court shall forthwith enter an order forwarding ~~[such]~~ the property to the state director of finance, and the clerk thereupon shall immediately deposit the money or funds, or any balance, with the director for disposition as provided in chapter 523A. The director at any time may authorize the payment out of the ~~[general funds of the State of]~~ unclaimed property trust fund under section 523A-26 any amount so forwarded to any person who establishes to the satisfaction of the director that the person is legally entitled thereto as an heir or devisee of the decedent, and the person shall be entitled to receive the amount thereof out of any moneys in the treasury not otherwise appropriated, upon warrant drawn by the state comptroller."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved July 5, 2012.)

ACT 230

S.B. NO. 2952

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Le Jardin Academy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$25,000,000, in one or more series, for the purpose of assisting Le Jardin Academy, a private not-for-profit elementary and secondary school, in financing and refinancing the planning, acquisition, construction, improvement, and equipping of its educational facilities in the State of Hawaii. Le Jardin Academy intends to construct a new administrative building along with new classrooms that will include science laboratories. These classrooms will be used by both middle and high school students. A gymnasium and an arts center will also be constructed that will benefit all students in pre-kindergarten through grade twelve. The legislature hereby finds and determines that the planning, acquisition, construction, improvement, and equipping of such educational facilities constitute a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit private nonsectarian elementary and secondary school that serves the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2017, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate Acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department of budget and finance may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2017.

SECTION 7. This Act shall take effect on July 1, 2012.

(Approved July 5, 2012.)

ACT 231

H.B. NO. 2347

A Bill for an Act Relating to General Obligation Bonds for Revenue-Producing Undertakings.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 47-4, Hawaii Revised Statutes, is amended to read as follows:

“§47-4 Bonds for revenue-producing undertakings. General obligation bonds may be issued under this chapter for an undertaking or loan program as defined in section 49-1 or for any other undertaking or purpose for which the bonds are authorized to be issued by other provisions of general law. The bonds may be combined into, issued, and sold with other general obligation bonds of the county as a single issue of bonds. The governing body may require that the general fund of the county shall be reimbursed from the revenue of the under-

taking, loan program, or other purpose for all of the principal of and interest on the bonds, or for such part hereof as the governing body may determine, and may further provide that the bonds shall be additionally secured by a pledge of the revenue of the undertaking, loan program, or other purpose, subject to the rights of the holders of any bonds then outstanding and the provisions of the ordinances or resolutions authorizing the outstanding bonds. The county may covenant with the holders of the bonds additionally secured by a pledge of such revenues that it will continue to impose and collect such revenues in amounts at least sufficient to provide for the payment of the principal and interest on the bonds to the extent authorized or permitted by law. Whenever the undertaking, loan program, or other enterprise shall be under the management and control of a department or board of the county and the department or board has the power and authority under chapter 49 to issue revenue bonds under that chapter, no bonds shall be authorized under this chapter for that undertaking by the governing body of the county unless the department or board shall have requested the issuance thereof by resolution and no pledge of the revenue of the undertaking shall be made to the payment and security of the bonds unless consented to by the department or board by resolution, and the pledge may be made by the department or board in the resolution requesting the issuance of the proposed bond issue and consenting to the pledge. A county may reserve the right to issue subsequent general obligation bonds equally and additionally secured by a pledge of the revenues of an undertaking, loan program, or other purpose.

General obligation bonds may also be issued under this chapter for any purpose authorized by section 47-3 additionally secured by a pledge of one or more specific categories of receipts not covered by the preceding paragraph of this section (which may include, without limitation, any rates, rentals, fees, charges, taxes, state or federal grants or other receipts) that are not derived from an undertaking or loan program for which the bonds are issued, as the governing body may determine, subject to the rights of the holders of any bonds then outstanding and the provisions of the ordinances or resolutions authorizing the outstanding bonds. The bonds may be combined into, issued, and sold with other general obligation bonds of the county as a single issue of bonds. The governing body may require that the general fund of the county shall be reimbursed from the receipts, for all of the principal of and interest on the bonds, or for any part hereof as the governing body may determine. Whenever the receipts to be pledged shall be under the management and control of a department or board of the county, no bonds shall be authorized under this chapter additionally secured by a pledge of the receipts, unless:

- (1) The department or board shall have requested the issuance thereof by resolution; and
- (2) The pledge of receipts has been consented to by the department or board by resolution; provided that the pledge may be made by the department or board in the same resolution.

The county may covenant with the holders of the bonds additionally secured by a pledge of such other receipts that it will continue to impose and collect the receipts in amounts at least sufficient to provide for the payment of the principal and interest on the bonds to the extent authorized or permitted by law. A county may reserve the right to issue subsequent general obligation bonds equally and additionally secured by a pledge of such receipts."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 5, 2012.)

ACT 232

H.B. NO. 2644

A Bill for an Act Relating to the Public Utilities Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that for Hawaii's farmers and ranchers to remain competitive and self-sustaining, incentives and mechanisms must be implemented to reduce costs and ensure that the State's constitutional mandate to promote diversified agriculture and increase agricultural self-sufficiency is fulfilled. The public utilities commission regulates the tariffs set for public utilities that provide essential services to the agricultural industry, such as interisland shipping.

The purpose of this Act is to permit the public utilities commission to authorize preferential rates for water carrier service for ratepayers engaged in agricultural activities.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§269- Preferential water carrier service rates for agricultural activities. The public utilities commission may authorize preferential water carrier service rates by tariff for ratepayers that engage in agricultural activities. The application process for obtaining preferential water carrier service rates by tariff may be established by the public utilities commission."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 5, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 233

H.B. NO. 1968

A Bill for an Act Relating to Cigarettes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that reduced ignition propensity cigarettes are expected to reduce accidental fires and related personal injury and property damage caused by cigarette smoking.

The purpose of this Act is to appropriate funds for the implementation of the reduced ignition propensity cigarette certification pursuant to section 132C-4, Hawaii Revised Statutes.

SECTION 2. There is appropriated out of the temporary deposits account in the trust fund of the department of labor and industrial relations the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2012-2013 to be deposited to the credit of the reduced ignition propensity cigarette

ACT 234

program special fund established pursuant to section 132C-9, Hawaii Revised Statutes.

SECTION 3. There is appropriated out of the reduced ignition propensity cigarette program special fund the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the purpose of funding one full-time administrator, one full-time assistant, and other costs of fulfilling the requirements of section 132C-4, Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of labor and industrial relations.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 234

H.B. NO. 2099

A Bill for an Act Relating to Workers' Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 386-93, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If the director of labor and industrial relations, appellate board, or any court finds that proceedings under this chapter have been brought, prosecuted, or defended without reasonable ground, the whole costs of the proceedings including reasonable attorney's fees may be assessed against the party who has [se] brought, prosecuted, or defended the proceedings.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 235

S.B. NO. 2678

A Bill for an Act Relating to Honouliuli.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In the decade following the September 11, 2001, attack on the World Trade Center in New York City, racial profiling, increases in hate crimes targeted toward specific ethnic and religious groups, and the detention of individuals without trial have resounded with past injustices.

Until September 11, 2001, the last place in the United States that was attacked by foreign enemies was Pearl Harbor. The Arizona Memorial became one of Hawaii's most popular tourist attractions because of its significance in world history as the site of the event that compelled the United States to enter World War II. As part of our nation's World War II Valor in the Pacific National Monument, approximately one million five hundred thousand people view the Arizona Memorial each year.

Honouliuli is also the setting of other key World War II sites. In Kapolei, Fort Barrette's cannons and road served as a supply road and connector to the

Kapolei Military Reservation, and made Fort Barrette a target for neutralization on December 7, 1941. In a pre-dawn, one-hour attack, air fighters riddled Fort Barrette road with bullets. In the same hour, Japanese planes launched a preemptive strike to disable military aircraft on the Marine Corps Air Field in Ewa. Nearly three years later, West Loch in Honouliuli was the base for Operation Forager, commanded by Admiral Chester Nimitz. This victorious, offensive attack in the Mariana Islands was a pivotal point in World War II for Allied Forces.

As a result of the actions by Japan in World War II, President Franklin D. Roosevelt issued Executive Order 9066, which authorized the military to relocate those whom it deemed to pose a threat to national security and to declare large sections of the country as military areas and exclusion zones. The order authorized the exclusion of persons of Japanese ancestry from the entire Pacific coast. The federal Census Bureau secretly provided confidential information on Japanese-Americans to assist in the internment efforts. Citizens with as little as one-sixteenth per cent of Japanese blood were placed in the internment camps. Korean-Americans, mistakenly thought to be Japanese, were also affected.

Without judicial process, one hundred ten thousand to one hundred twenty thousand innocent Americans of Japanese ancestry were unlawfully rounded up, sent to, and detained in war relocation camps. Sixty-two per cent of the detainees were citizens of the United States. Interrogators accused the detainees of disloyalty, sabotage, and spying. These accusations stung the hearts of the detainees who had committed no crime. Entire families, with children born in the United States, were taken out of their homes and placed in internment camps with only basic belongings. Once removed, their lands were seized and forfeited. The only basis for the deprivation of liberty and property was that their ancestors came from Japan.

In Hawaii, American authorities interned between one thousand two hundred to one thousand eight hundred Japanese-Americans. The already existing state of martial law lessened the perceived need for wholesale internment. When five of the relocation centers in Hawaii were closed, many of the Hawaii internees were transferred to mainland internment sites. Three hundred detainees remaining in Hawaii were housed in a newly constructed camp in Honouliuli. While no persons were officially charged, they remained in the detention centers for the duration of the war. Sanji Abe, the first American of Japanese ancestry to be elected to the territorial senate, and Thomas Sakakihara, a member of the territorial house of representatives, were among the Honouliuli internees.

In her landmark book, "Farewell to Manzanar," Jeanne Wakatsuki Houston echoes what many survivors felt about their experiences in the internment camps. Visiting the Manzanar internment camp with her husband and three children decades later, the author needed to remind herself that it actually existed, because with time, she began to think that the experiences in her young life were only a creation of her imagination.

In Hawaii, the Alien Internment Camp in Honouliuli stands as a reminder of a time when fear and prejudice overrode the civil rights for which America is known. A report entitled "Costs of War," written by a multi-national team of highly respected scholars, shows that the actions taken in response to September 11, 2001, echo the injustices experienced by innocent Japanese-Americans during and following World War II.

The purpose of this Act is to:

- (1) Provide state support toward preservation of the site of the World War II internment and prisoner of war camp in Honouliuli;
- (2) Establish a mechanism to leverage county, state, federal, and private funding of an educational resource center at the site; and

- (3) Memorialize the struggle for civil rights by Hawaii's people.

SECTION 2. (a) The department of land and natural resources shall establish a Honouliuli park site project advisory group to develop recommendations to leverage county, state, federal, and private funding for an educational resource center at the Honouliuli site. The advisory group shall work with the Japanese Cultural Center of Hawaii, Japanese American Citizens League, University of Hawaii at West-Oahu, historians, and other interested stakeholders, including business, veteran, community, legislative, and other organizations. The work of the advisory group shall complement the Japanese Cultural Center of Hawaii's goal of designating the Honouliuli internment-prisoner of war camp site and associated sites within Hawaii as part of the United States National Park Service.

(b) The advisory group shall elect a chairperson from among its members. The advisory group shall be composed of:

- (1) A member from the state historic preservation division of the department of land and natural resources;
- (2) A member from the University of Hawaii West Oahu;
- (3) A member from the Japanese American Citizens League-Honolulu Chapter;
- (4) A member from the Historic Hawaii Foundation;
- (5) A member from Monsanto;
- (6) A member appointed by the speaker of the house of representatives; and
- (7) A member appointed by the president of the senate.

(c) The advisory group shall report to the legislature no later than twenty days prior to the convening of the regular session of 2013 on:

- (1) Recommendations to leverage county, state, federal, and private funding for an educational resource center at the Honouliuli site; and
- (2) The status of designating the Honouliuli internment-prisoner of war camp site and associated sites within Hawaii as part of the United States National Park Service.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the activities of the advisory group pursuant to section 2 of this Act.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act; provided that no funds shall be expended unless matched on a dollar-for-dollar basis by federal, private, or other external funds.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 236

S.B. NO. 2318

A Bill for an Act Relating to Adult Guardianship and Protective Proceedings Jurisdiction.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE
PROCEEDINGS JURISDICTION ACT**

PART I. GENERAL PROVISIONS

§ -1 Short title. This chapter may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ -2 Definitions. When used in this chapter, unless the context requires otherwise:

“Adult” means an individual who has attained eighteen years of age.

“Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed under chapter 551 or 560.

“Guardian” means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under chapter 551 or 560.

“Guardianship order” means an order appointing a guardian.

“Guardianship proceeding” means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

“Incapacitated person” means an adult for whom a guardian has been appointed.

“Party” means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

“Person” except in the terms “incapacitated person” or “protected person”, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Protected person” means an adult for whom a protective order has been issued.

“Protective order” means an order appointing a conservator or other order related to management of an adult’s property.

“Protective proceeding” means a judicial proceeding in which a protective order is sought or has been issued.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Respondent” means an adult for whom a protective order or the appointment of a guardian is sought.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

§ -3 International application. A court of the State of Hawaii may treat a foreign country as if it were a state for the purpose of applying this part and parts II, III, and IV.

§ -4 Communication between courts. (a) A court of the State of Hawaii may communicate with a court in another state concerning a proceeding arising under this chapter. Either court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court

shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

§ -5 Cooperation between courts. (a) In a guardianship or protective proceeding in the State of Hawaii, the court may request the appropriate court of another state to do any of the following:

- (1) Hold an evidentiary hearing;
- (2) Order a person in the other state to produce evidence or give testimony pursuant to procedures of that state;
- (3) Order that an evaluation or assessment be made of the respondent;
- (4) Order any appropriate investigation of a person involved in a proceeding;
- (5) Forward to the court of the State of Hawaii a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2), and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4);
- (6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; or
- (7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 Code of Federal Regulations section 160.103, as amended.

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), a court of the State of Hawaii has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

§ -6 Taking testimony in another state. (a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in the State of Hawaii for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court of the State of Hawaii may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of the State of Hawaii shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of the State of Hawaii by technological means that do not produce an original writing may not be excluded from evidence on an objection based on Rule 1002 of the Hawaii Rules of Evidence.

PART II. JURISDICTION

§ -7 Definitions; significant factors. (a) For purposes of this part: "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment

of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

"Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

"Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under sections -9 and -16(e) whether a respondent has a significant connection with a particular state, the court shall consider:

- (1) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;
- (2) The length of time the respondent at any time was physically present in the state and the duration of any absence;
- (3) The location of the respondent's property; and
- (4) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

§ -8 **Exclusive basis.** This part provides the exclusive jurisdictional basis for a court of the State of Hawaii to appoint a guardian or issue a protective order for an adult.

§ -9 **Jurisdiction.** A court of the State of Hawaii has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

- (1) The State of Hawaii is the respondent's home state;
- (2) On the date the petition is filed, the State of Hawaii is considered to be a significant-connection state and:
 - (A) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because the State of Hawaii is a more appropriate forum; or
 - (B) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and before the court makes the appointment or issues the order:
 - (i) A petition for an appointment or order is not filed in the respondent's home state;
 - (ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and
 - (iii) The court of the State of Hawaii concludes that it is an appropriate forum under the factors set forth in section -12;
- (3) The State of Hawaii does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because forum and jurisdiction is more appropriate in the State of Hawaii and would be consistent with the United States Constitution and Hawaii state constitution; or

- (4) The requirements for special jurisdiction under section -10 are met.

§ -10 Special jurisdiction. (a) A court of the State of Hawaii, while lacking jurisdiction under section -9(1) through (3), shall have special jurisdiction to do any of the following:

- (1) Appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in the State of Hawaii;
- (2) Issue a protective order with respect to real or tangible personal property located in the State of Hawaii; or
- (3) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section -16.

(b) If a petition for the appointment of a guardian in an emergency is brought in the State of Hawaii and the State of Hawaii was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

§ -11 Exclusive and continuing jurisdiction. Except as otherwise provided in section -10, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

§ -12 Appropriate forum. (a) A court of the State of Hawaii having jurisdiction under section -9 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of the State of Hawaii declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (1) Any expressed preference of the respondent;
- (2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- (3) The length of time the respondent was physically present in or was a legal resident of a state;
- (4) The distance of the respondent from the court in each state;
- (5) The financial circumstances of the respondent's estate;
- (6) The nature and location of the evidence;
- (7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (8) The familiarity of the court of each state with the facts and issues in the proceeding; and
- (9) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

§ -13 Jurisdiction declined by reason of conduct. (a) If at any time a court of the State of Hawaii determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

- (1) Decline to exercise jurisdiction;
- (2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
- (3) Continue to exercise jurisdiction after considering:
 - (A) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
 - (B) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section -12(c); and
 - (C) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section -9.

(b) If a court of the State of Hawaii determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against the State of Hawaii or a governmental subdivision, agency, or instrumentality of the State of Hawaii unless authorized by law other than this chapter.

§ -14 Notice of proceeding. If a petition for the appointment of a guardian or issuance of a protective order is brought in the State of Hawaii and it was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of the State of Hawaii, notice of the petition shall be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice shall be given in the same manner as notice is required to be given in the State of Hawaii.

§ -15 Proceedings in more than one state. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in the State of Hawaii under section -10(a)(1) or (a)(2), if a petition for the appointment of a guardian or issuance of a protective order is filed in the State of Hawaii and in another state and neither petition has been dismissed or withdrawn, the following rules shall apply:

- (1) If the court of the State of Hawaii has jurisdiction under section -9, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section -9 before the appointment or issuance of the order; and
- (2) If the court of the State of Hawaii does not have jurisdiction under section -9, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court of the State of

Hawaii shall dismiss the petition unless the court in the other state determines that the court of the State of Hawaii is a more appropriate forum.

PART III. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

§ -16 Transfer of guardianship or conservatorship to another state. (a)

A guardian or conservator appointed in the State of Hawaii may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under subsection (a) shall be given to the persons that would be entitled to notice of a petition in the State of Hawaii for the appointment of a guardian or conservator.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

- (1) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;
- (2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and
- (3) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

- (1) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section -7(b);
- (2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and
- (3) Adequate arrangements will be made for management of the protected person's property.

(f) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

- (1) A provisional order from the court to which the proceeding is to be transferred that accepts the proceeding and is issued under provisions similar to section -17; and
- (2) The documents required to terminate a guardianship or conservatorship in the State of Hawaii.

§ -17 Accepting guardianship or conservatorship transferred from another state. (a)

To confirm transfer of a guardianship or conservatorship transferred to the State of Hawaii under provisions similar to section -16, the guardian or conservator shall petition the court of the State of Hawaii to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in the transferring state and the State of Hawaii. The notice shall be given in the same manner as notice is required to be given in the State of Hawaii.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

- (1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or
- (2) The guardian or conservator is ineligible for appointment in the State of Hawaii.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in the State of Hawaii upon its receipt of a final order, issued under provisions similar to section -16, from the court where the proceeding is being transferred from.

(f) No later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of the State of Hawaii.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by a court of the State of Hawaii of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in the State of Hawaii under chapter 551 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

PART IV. REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

§ -18 Registration of guardianship orders. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in the State of Hawaii, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in the State of Hawaii by filing as a foreign judgment in a court, in any appropriate judicial circuit of the State of Hawaii, certified copies of the order and letters of office.

§ -19 Registration of protective orders. If a conservator has been appointed in another state and a petition for a protective order is not pending in the State of Hawaii, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in the State of Hawaii by filing as a foreign judgment in a court of the State of Hawaii, in any judicial circuit in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

§ -20 Effect of registration. (a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in the State of Hawaii all powers authorized in the order of appointment except as prohibited under the laws of the State of Hawaii, including maintaining actions and proceedings in the State of Hawaii and, if the guardian or conservator is not a resident of Hawaii, subject to any conditions imposed upon nonresident parties.

(b) A court of the State of Hawaii may grant any relief available under this chapter and other law of the State of Hawaii to enforce a registered order.

PART V. MISCELLANEOUS PROVISIONS

§ -21 Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ -22 Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that Act, title 15 United States Code section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, title 15 United States Code section 7003(b)."

SECTION 2. This Act shall apply to guardianship and protective proceedings begun on or after the effective date of this Act; provided that the new parts I, III, and IV and sections -21 and -22 established by section 1 of this Act shall apply to proceedings begun before the effective date of this Act, regardless of whether a guardianship or protective order has been issued.

SECTION 3. This Act shall take effect on September 1, 2014.

(Approved July 6, 2012.)

ACT 237

S.B. NO. 2779

A Bill for an Act Relating to the Aging and Disability Resource Centers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the aging and disability resource centers initiative is a collaborative federal and state multi-agency effort with the support of the counties led by the United States Administration on Aging and Centers for Medicare and Medicaid Services to streamline access to long-term supports and services for older adults, persons with disabilities, family caregivers, and providers.

Aging and disability resource centers are designed to address the frustrations many consumers and their families experience when they need to obtain information and access to long-term supports and services. In many communities, long-term supports and services are administered by multiple agencies, both public and private, and have complex, fragmented, and often duplicative intake, assessment, and eligibility functions. Determining how to obtain long-term supports and services can be difficult. A single, coordinated system of information

and access for all persons seeking long-term supports and services minimizes confusion, enhances individual choice, and fosters informed decision-making. It also improves the ability of state and county governments to manage resources and monitor program quality through centralized data collection and evaluation, which will result in the ability to target existing resources where they are most needed, better estimate future need, and develop long-term strategies for sustainability.

Aging and disability resource centers use two broad strategies to divert persons from unnecessary and costly long-term institutional care and ensure that short-term institutional stays do not become permanent: (1) intervening with options counseling; and (2) expediting eligibility determination processes for home- and community-based services. Aging and disability resource centers serve a critical role in improving the ability of state and county governments to effectively manage the long-term supports and services system, monitor program quality, and measure responsiveness of state and county systems of care.

The purpose of this Act is to codify the authorization for the establishment of a statewide aging and disability resource center with sites in each county.

SECTION 2. Chapter 349, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . AGING AND DISABILITY RESOURCE CENTERS PROGRAM

§349- Definitions. As used in this part, unless the context otherwise requires:

“Aging and disability resource centers” means an entity established by the State as part of the state system of long-term care serving as a highly visible and trusted source where people of all incomes and ages can obtain information on the full range of long-term support options and a single point of entry for access to public long-term support programs and benefits.

“Area agency on aging” means the agency in each county designated by the executive office on aging, under section 305(a)(2)(A) of the Older Americans Act, P.L. 89-73, as amended, to facilitate the area-wide development and implementation of a comprehensive, coordinated system for providing long-term care in home and community-based settings, in a manner responsive to the needs and preferences of older individuals and their family caregivers.

“Dementia” means a group of symptoms affecting intellectual and social abilities severely enough to interfere with daily functioning.

“Developmental disability” means a severe, chronic disability of an individual that:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the individual attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity:
 - (A) Self-care;
 - (B) Receptive and expressive language;
 - (C) Learning;
 - (D) Mobility;
 - (E) Self-direction;
 - (F) Capacity for independent living; or
 - (G) Economic self-sufficiency; and

- (5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

An individual from birth to age nine, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1) through (5) of this definition if the individual, without services and supports, has a high probability of meeting three or more of those criteria later in life.

"Family caregiver" means a spouse, adult child, other relative, partner, or friend who has a personal relationship with, and provides a broad range of unpaid assistance for an older adult with a chronic or disabling condition.

"Informal caregiver" means a person who provides care for an older person or person with a disability who needs long-term supports and services, but does not receive compensation.

"Intellectual disability" means a person's attributes or characteristics that demonstrate a limitation in intellectual functioning and adaptive behavior as expressed in conceptual, social, and practical skills, which are apparent prior to the age of eighteen. This definition shall be based on the following assumptions:

- (1) Limitations in present functioning shall be considered within the context of community environments typical of the individual's age peers and culture;
- (2) Validate assessment considers cultural and linguistic diversity as well as differences in communication, sensory, motor, and behavioral factors;
- (3) Within the individual, limitations often coexist with strengths;
- (4) An important purpose of describing limitations is to develop a profile of needed supports; and
- (5) With appropriate personalized supports over a sustained period, the life functioning of the person with intellectual disability generally will improve.

"Long-term supports and services" means the broad range of assistance and care needed by older persons or persons with physical or mental disabilities who have lost or never acquired the ability to function independently.

"Options counseling" means an interactive decision-support process whereby consumers, family members, and significant others are supported in their deliberations to determine appropriate long-term care choices in the context of a consumer's needs, preferences, values, and individual circumstances.

"Physical disability" means the broad range of disabilities including orthopedic, neuromuscular, cardiovascular, and pulmonary disorders, which may be congenital or a result of aging or injury.

"Severe mental illness" means one of several diseases that affects the brain and significantly and functionally impairs an individual for an indefinite period of time.

§349- Aging and disability resource centers; established. (a) A state-wide aging and disability resource center may be established with sites in each county to streamline access to long-term supports and services by integrating the full range of long-term supports and services into a single, coordinated system.

(b) The aging and disability resource center may be the single point of entry in every county where persons of all ages, incomes, and disabilities may access information in a person-centered manner on the full range of long-term supports and services options, including but not limited to:

- (1) Federal, state, and county revenue-funded programs and services including those funded by medicaid, medicare, the Older Americans Act, the Department of Veterans Affairs, and kupuna care;
- (2) A centralized application process for publicly funded long-term services and supports;
- (3) Privately administered programs and services;
- (4) Supports and services for persons with Alzheimer's disease and other related dementia;
- (5) Transportation services;
- (6) Housing options;
- (7) Elder rights protection;
- (8) Hospital and nursing home discharge planning and care transition;
- (9) Health, prevention, and wellness programs;
- (10) Support for grandparents raising grandchildren and other relatives age fifty-five years or older caring for children;
- (11) Informal and family caregiver support services; and
- (12) Community resources and services for individuals with disabilities.

vices to:

- (c) The aging and disability resource centers shall target delivery of services to:
 - (1) Persons sixty years of age and older;
 - (2) Persons of any age with physical disabilities, severe mental illness, dementia, and developmental or intellectual disabilities;
 - (3) Informal and family caregivers providing assistance to persons needing long-term supports and services;
 - (4) Professionals seeking long-term supports and services on behalf of their clients; and
 - (5) Persons planning for their future long-term supports and services needs.

(d) The executive office on aging shall coordinate the implementation of the statewide aging and disability resource center.

(e) The aging and disability resource center may be a function of each area agency on aging within the respective geographic service area."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,400,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the executive office on aging of the department of health to administer and establish a statewide aging and disability resource center with sites in each county.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 238

S.B. NO. 2320

A Bill for an Act Relating to Aging.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide essential home- and community-based services for Hawaii's elderly population by codifying the au-

thorization for the establishment of the kupuna care program and appropriating funds to support the needs of Hawaii's older adults and elderly individuals.

SECTION 2. Chapter 349, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§349- Kupuna care program. (a) The executive office on aging may establish the kupuna care program. The program shall provide affordable and quality home- and community-based services.

(b) The program may be provided in every county as a function of the aging and disability resource centers.

(c) As used in this section, unless the context otherwise requires:

"Aging and disability resource centers" means an entity established by the State as part of the state system of long-term care, serving as a highly visible and trusted source where people of all incomes and ages can get information on the full range of long-term support options, and a single point of entry for access to public long-term support programs and benefits.

"Family caregivers" means a spouse, adult child, other relative, partner, or friend who has a personal relationship with, and provides a broad range of unpaid assistance for an older adult with a chronic or disabling condition.

(d) The director shall adopt rules pursuant to chapter 91 necessary for the purposes of this section."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,200,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the kupuna care program; provided that the sum appropriated shall be in addition to the base budget of the executive office on aging.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$426,772 or so much thereof as may be necessary for fiscal year 2012-2013 for the healthy aging partnership program of the department of health's executive office on aging.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$285,000 or so much thereof as may be necessary for fiscal year 2012-2013 to provide funding for grants, pursuant to chapter 42F, Hawaii Revised Statutes, for senior centers and to be distributed as follows:

- (1) Catholic Charities Hawaii for the Lanakila multi-purpose senior center \$175,000;
- (2) Moiliili Community Center for the Moiliili senior center \$50,000; and
- (3) Waikiki Community Center \$60,000;

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant, pursuant to chapter 42F, Hawaii Revised Statutes, to the Alzheimer's Association, Aloha Chapter, to:

- (1) Establish a wanderer's registration service to protect individuals with Alzheimer's disease and related dementia;
- (2) Conduct targeted outreach throughout the State to increase enrollment in the national wanderer's registry and offer scholarships and subsidies to low-income families, as defined by the United States Department of Health and Human Services' 2011 poverty guidelines for Hawaii, who want to enroll in the registry; and
- (3) Conduct annual training for first responders and other community members to increase awareness and provide ongoing education on best practices for search and rescue efforts for people with dementia.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 7. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 239

S.B. NO. 2335

A Bill for an Act Relating to Special Management Areas.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify an amendment to section 205A-22, Hawaii Revised Statutes, made by Act 153, Session Laws of Hawaii 2011, to require the counties to concurrently process subdivision and special management area use permits to ensure that a special management area use permit is processed before final subdivision approval.

SECTION 2. Section 205A-22, Hawaii Revised Statutes, is amended by amending the definition of "development" to read as follows:

"Development" means any of the uses, activities, or operations on land or in or under water within a special management area that are included below:

- (1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- (2) Grading, removing, dredging, mining, or extraction of any materials;
- (3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
- (4) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
- (5) Construction, reconstruction, demolition, or alteration of the size of any structure.

"Development" does not include the following:

- (1) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development;

- (2) Repair or maintenance of roads and highways within existing rights-of-way;
- (3) Routine maintenance dredging of existing streams, channels, and drainage ways;
- (4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
- (5) Zoning variances, except for height, density, parking, and shoreline setback;
- (6) Repair, maintenance, or interior alterations to existing structures;
- (7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (8) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
- (9) Transfer of title to land;
- (10) Creation or termination of easements, covenants, or other rights in structures or land;
- (11) Final subdivision approval; provided that in counties that may automatically approve tentative subdivision applications as a ministerial act within a fixed time of the submission of a preliminary plat map, unless the director takes specific action, a special management area use permit if required, shall be processed concurrently with an application for tentative subdivision approval or after tentative subdivision approval and before final subdivision approval;
- (12) Subdivision of land into lots greater than twenty acres in size;
- (13) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land ~~[which]~~ that is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
- (14) Installation of underground utility lines and appurtenant above-ground fixtures less than four feet in height along existing corridors;
- (15) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;
- (16) Nonstructural improvements to existing commercial structures; and
- (17) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens;

provided that whenever the authority finds that any excluded use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as "development" for the purpose of this part."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

ACT 240

S.B. NO. 2239

A Bill for an Act Relating to Economic Development.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The purpose of this part is to exempt grants made under the community-based economic development program from the Hawaii public procurement code.

SECTION 2. Section 210D-13, Hawaii Revised Statutes, is amended to read as follows:

“§210D-13 Exemption from ~~[chapter]~~ chapters 42F~~[-]~~ and 103D. The provisions of ~~[chapter]~~ chapters 42F and 103D shall not apply to the grants made pursuant to this chapter, but all grants made under this chapter shall be made only in accordance with the standards and conditions specified in section 210D-11.”

PART II

SECTION 3. The purpose of this part is to clarify that moneys in the hydrogen investment capital special fund shall be expended by the Hawaii strategic development corporation.

SECTION 4. Section 211F-5.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Moneys in the fund shall be ~~[used]~~ expended by the corporation to:
- (1) Provide seed capital for and venture capital investments in private sector and federal projects for research, development, testing, and implementation of the Hawaii renewable hydrogen program, as set forth in section 196-10; and
 - (2) For any other purpose deemed necessary to carry out the purposes of section 196-10.”

PART III

SECTION 5. The purpose of this part is to repeal the high technology innovation corporation.

SECTION 6. Chapter 206M, part IV, Hawaii Revised Statutes, is repealed.

PART IV

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval; provided that section 6 shall take effect on June 30, 2013.

(Approved July 6, 2012.)

A Bill for an Act Relating to the Small Business Regulatory Review Board.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to ensure the stability of the small business regulatory review board by:

- (1) Authorizing the board with good cause to request a written response from the agency explaining the rationale used to deny the public concerns;
- (2) Reducing the size of the board from eleven to nine members, with eight members appointed at large and the director of business, economic development, and tourism, or the director's designated representative, to serve as an ex officio voting member of the board; and
- (3) Requiring each agency to notify the board on an annual basis of any rules that should be amended or repealed to reflect statutory amendments or repeals.

SECTION 2. Section 201M-3, Hawaii Revised Statutes, is amended to read as follows:

“[H]§201M-3 **Small business statement after public hearing.** (a) For any proposed ~~[rules]~~ rule that ~~[affect]~~ affects small business, the agency shall also submit a small business statement to the small business regulatory review board and the departmental advisory committee on small business after the public hearing is held. This section shall not apply to emergency rules. The small business statement required by this section shall provide the following information:

- (1) A description of how opinions or comments from affected small business were solicited, a summary of the public and small business comments, and a summary of the agency's response to those comments;
- (2) The number of persons who:
 - (A) Attended the public hearing;
 - (B) Testified at the hearing; and
 - (C) Submitted written comments; and
- (3) If there was a request to change the proposed rule at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule ~~[without the]~~, the reason why a requested change was not made, and the problems or negative result the change would provide if adopted.

(b) If the small business regulatory review board finds that a statement provided pursuant to subsection (a)(3):

- (1) Indicates inconsistency with any of the agency's determinations under section 201M-2(b); or
- (2) Does not address the concerns of public input,

the board with good cause may request a written response from the agency explaining the rationale used to deny the public concerns within ten working days of receipt of the small business statement after public hearing. The agency shall respond in writing to the board's concerns within ten working days.

(c) The written response from an agency required in subsection (b), at a minimum, shall:

- (1) Specifically address each issue and concern raised in the board's request for a written response; and

- (2) Affirmatively state that the agency has considered all written and oral testimony received at the agency's public hearing and has addressed all issues or concerns raised in the written and oral testimony."

SECTION 3. Section 201M-5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The board shall consist of ~~[eleven]~~ nine members, who shall be appointed by the governor pursuant to section 26-34~~[- Nominations to fill vacancies shall be made from names submitted by the review board.]; provided that:~~

- (1) Three members shall be appointed from a list of nominees submitted by the president of the senate;
- (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (3) Two members shall be appointed by the governor;
- (4) The director of business, economic development, and tourism, or the director's designated representative, shall serve as an ex officio voting member of the board;
- (5) The appointments shall reflect representation of a variety of businesses in the State; ~~[provided that no]~~
- (6) No more than two members shall be representatives from the same type of business[.]; and [that there]
- (7) There shall be at least [two representatives] one representative from each county.

For the purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.

(c) ~~[All]~~ Except for the ex officio member, all members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled."

SECTION 4. Section 201M-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each agency having rules that affect small business shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board~~[-]; provided that, by June 30 of each year, each agency shall submit to the small business regulatory review board a list of any rules to be amended or repealed, based upon any new, amended, or repealed statute.~~ The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules that affect small business and any other reasons to justify ~~[its]~~ their continued implementation."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

A Bill for an Act Relating to Information Technology.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Chapter 39A, part VI, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“PART VI. ASSISTING UTILITIES SERVING THE GENERAL PUBLIC
IN PROVIDING ELECTRIC ENERGY [OR], GAS, OR
TELECOMMUNICATIONS”**

SECTION 2. Section 39A-191, Hawaii Revised Statutes, is amended as follows:

1. By adding four new definitions to read:

““Project” means any energy project or telecommunications project.

“Telecommunications carrier” or “telecommunications common carrier” has the meaning defined by section 269-1.

“Telecommunications project” means any facilities for each single project or multiproject program for the provision of telecommunications service of a project party that is a telecommunications carrier or a telecommunications common carrier.

“Telecommunications service” has the meaning defined by section 269-1.”

2. By amending the definitions of “project agreement” and “project party” to read:

““Project agreement” means any agreement entered into under this part by the department with the project party for the financing from the proceeds of special purpose revenue bonds of a telecommunications project or an energy project, including without limitation any loan agreement.

“Project party” means an electric or gas utility serving the general public and [which] that is regulated by the public utilities commission under chapter 269[-], or a telecommunications carrier or telecommunications common carrier, whether or not subject to regulation by the public utilities commission under chapter 269.”

SECTION 3. Section 39A-192, Hawaii Revised Statutes, is amended to read as follows:

“§39A-192 Department powers as to [energy] projects. In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

(1) Notwithstanding and without compliance with section 103-7 and chapter 103D, but with the approval of the governor, to:

(A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and

(B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;

- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for an [energy] project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of [an energy] a project;
- (4) As security for the payment of the principal of and interest on the special purpose revenue bonds issued for [an energy] a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the [energy] project for which the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the [energy] project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances [an energy] a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire [an energy] a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party."

SECTION 4. Section 39A-193, Hawaii Revised Statutes, is amended to read as follows:

"§39A-193 Compliance with state and local law. The financing of any [energy] project under this part shall not relieve any project party or other user of such [energy] project from the laws, ordinances, [and] rules, and regulations of the State and county or any departments or boards thereof with respect to the construction, operation, and maintenance of [energy] projects, compliance with master plans or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the [energy] project, and such laws shall be applicable to such party or such other user to the same extent they would be if the costs of the [energy] project were directly financed by the project party."

SECTION 5. Section 39A-194, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall not enter into any project agreement with respect to any [energy] project unless the department shall determine that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the [energy] project, or otherwise."

SECTION 6. Section 39A-195, Hawaii Revised Statutes, is amended to read as follows:

"§39A-195 Project agreement. No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have already entered into a project agreement with respect to the [energy] project for the financing of which the bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the [energy] project is used or occupied by the project party, the sum or sums, at the time or times, and in the amount or amounts that shall be sufficient:
 - (A) To pay the principal and interest on all special purpose revenue bonds issued to finance the [energy] project as the bonds become due, including any premium payable upon any required redemption of the bonds;
 - (B) To establish or maintain a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) To pay all fees and expenses (including the fees and expenses of the paying agents and trustees) assessed in connection with the special purpose revenue bonds; and
 - (D) To pay the fees, costs, and expenses (direct or indirect) assessed by the department in administering the bonds or in carrying out the project agreement, as determined by the department; and
- (2) To operate, maintain, and repair the [energy] project as long as it is used in the business of local furnishing of electric energy or gas, or in the business of providing telecommunications service, and to pay all costs of the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the [energy] project and shall be paid into the general fund of the State."

SECTION 7. Section 39A-196, Hawaii Revised Statutes, is amended to read as follows:

"§39A-196 Issuance of special purpose revenue bonds to finance [energy] projects. In addition to the other powers [which] that it may otherwise have, the department may issue special purpose revenue bonds to finance, in whole or in part, the costs of [an energy] a project. All bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds issued pursuant to this part shall be issued in the name of the department and not in the name of the State.

The department,¹ in determining the cost of any [energy] project, may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of such [energy] project;
- (2) Interest on such bonds and the expenses of the State in connection with such bonds and the [energy] project to be financed from the proceeds of such bonds accruing or incurred prior to and during the period of construction and for not exceeding six months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of cost and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the [energy] project;
- (6) Administration expenses;
- (7) Interest cost incurred by the project party with respect to the [energy] project prior to the issuance of the special purpose revenue bonds; and
- (8) Such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, or extension of the [energy] project, the financing thereof, placing of the [energy] project in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to utilities serving the general public and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of such bonds to assist, project parties, is in the public interest."

SECTION 8. Section 39A-197, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Special purpose revenue bonds for each single project or multiproject program for each type of utility serving the general public shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of such bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any such special purpose revenue bond authorization, or any portion of such special purpose revenue bond authorization, [which] that has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each [energy] project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, shall have such rank or priority and may be made redeemable before maturity at the option of the department, at such price or prices and under such terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the

State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in such manner, either at public or at private sale, and for such price as it may determine."

SECTION 9. Section 39A-199, Hawaii Revised Statutes, is amended to read as follows:

"§39A-199 Powers with respect to and security for special purpose revenue bonds. ~~[In order to]~~ To secure the payment of any of the special purpose revenue bonds issued pursuant to this part, and interest thereon, or in connection with such bonds, the department shall have the power as to such bonds:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued for the [energy] project financed from proceeds thereof, and interest thereon, and to covenant against thereafter pledging any such revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such revenues.
- (2) To pledge and assign the interest and rights of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder.
- (3) To covenant as to the use and disposition of the proceeds from the sale of such bonds.
- (4) To covenant to set aside or pay over reserves and sinking funds for such bonds and as to the disposition thereof.
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.
- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, conditions, or obligation.
- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with such trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the [energy] project and to apply the proceeds to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply such revenues to the payment of the principal and interest on such bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering such bonds or in carrying out the project agreement. In the event that such trustee shall be appointed, any trust indenture or trust agreement

or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable ~~[in order]~~ to secure such bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation, the holding of the special purpose revenue bonds and coupons ~~[which]~~ that have been paid and the supervision of the destruction thereof in accordance with law.

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties.
- (9) To make such covenants and do any and all acts and things as may be necessary or convenient or desirable in order to secure such bonds, notwithstanding that such covenants, acts, or things may not be enumerated herein; it being the purpose hereof to give the department power to do all things in the issuance of such bonds and for their security that may be consistent with the Constitution of the State of Hawaii."

SECTION 10. Section 39A-203, Hawaii Revised Statutes, is amended to read as follows:

"§39A-203 Use of revenues derived from project agreement. The department shall have the right to appropriate, apply, or expend the revenues derived from the project agreement for ~~[an energy]~~ a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefor; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operation, and maintenance of the ~~[energy]~~ project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State."

SECTION 11. Section 39A-205, Hawaii Revised Statutes, is amended to read as follows:

"§39A-205 Exemption from taxation of department property. All revenues derived by the department from any ~~[energy]~~ project or under the project agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the department in any ~~[energy]~~ project shall also be exempt from all state and county taxation. Except as otherwise provided by law, the interest of the project party or user of such project in ~~[an energy]~~ a proj-

ect or under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the [energy] project were directly financed by the project party or other user."

SECTION 12. Section 39A-206, Hawaii Revised Statutes, is amended to read as follows:

"§39A-206 Refunding special purpose revenue bonds. The legislature, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption. The legislature may provide, by act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of [financing]²:

- (1) Financing the cost of [an energy] a project or improvement or expansion thereof¹; and
- (2) [refunding] Refunding special purpose revenue bonds [which] that shall theretofore have been issued under this part and shall then be outstanding, whether or not such outstanding special purpose revenue bonds have matured or are then subject to redemption.

Nothing in this section shall require or be deemed to require the department to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded [which] that were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any law authorizing the issuance thereof, or, in the event the department elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of such special purpose revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the bonds, shall be governed by the foregoing provisions of this part insofar as the provisions may be applicable."

SECTION 13. Section 39A-208, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For the purpose of public disclosure, the public utilities commission, in every rate proceeding involving a public utility that is regulated by the public utilities commission under chapter 269 and which has utilized special purpose revenue bonds, shall make estimates of [the (A)]:

- (1) The probable amounts [which] that would have been incurred by the utility as capital costs if financing by means other than special purpose revenue bonds were utilized¹; ~~[(B) the]~~;
- (2) The amount the utility pays for such bonds, including the principal and sinking fund requirements, the interest, and other expenses appropriately attributable to special purpose revenue bond financing²; and ~~[(C) the]~~
- (3) The difference between ~~[(A)]~~ (1) and ~~[(B)]~~ (2), or the estimated savings realized by the consumers of the utility services."

PART II

SECTION 14. The legislature finds that the development of broadband infrastructure to enable access to affordable ultra high-speed internet is essential to build a vibrant and sustainable economy and workforce in Hawaii and improve the quality of life for residents. The legislature further finds that the utilization of abandoned water mains in conjunction with Act 151, Session Laws of Hawaii 2011, provides a unique opportunity to achieve the State's Hawaii broadband initiative goals in a timely and cost effective manner. Underground cables are protected from weather-related risks and accident damage, and preserve Hawaii's uncluttered environment. The use of abandoned water mains is a proven way to facilitate cost efficient and rapid deployment of buried fiber optic infrastructure, while minimizing the unavoidable traffic impacts that plague traditional underground construction methods, especially in the urban core. For these reasons, the legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 15. Pursuant to part VI, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$100,000,000, in one or more series, for the purpose of assisting Clearcom, Inc., or a partnership headed by Clearcom, Inc., with the planning, permitting, designing, constructing, equipping, and operating of broadband infrastructure at locations throughout the State.

SECTION 16. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VI, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist utilities serving the general public in providing electric energy, gas, or telecommunications.

SECTION 17. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2017, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 15 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 15. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 18. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VI, chapter 39A, Hawaii Revised Statutes, and the department of budget and finance may combine a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VI, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to

exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 19. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2017.

PART III

SECTION 20. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 21. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

Notes

1. Comma should be underscored.
2. So in original.

ACT 243

H.B. NO. 2314

A Bill for an Act Relating to the Transient Accommodations Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1984, the department of planning and economic development contracted a study on the potential for developing a convention center in Hawaii. The study recommended that the transient accommodations tax be increased by 1.5 per cent and that one-sixth of the transient accommodations tax revenues be earmarked to cover the revenue bonds to finance the convention center. In 1993, the legislature provided that one-sixth of the transient accommodations tax, subsequently amended to 17.3 per cent, be deposited into the convention center capital and operations special fund.

In 2002, the transient accommodations tax revenues deposited into the convention center enterprise special fund were limited to \$31,000,000, and, in 2006, to \$33,000,000. A problem arises as a result of the limits on the deposits into the special fund, because collections are made on a calendar year basis, but expenditures from the fund are made on a fiscal year basis. In some years, the \$33,000,000 limit is achieved in the third month of the fiscal year, October, and no further revenues are deposited into the fund until the new calendar year. This results in a shortfall in the fund's ability to pay the debt service for the convention center.

The purpose of this Act is to provide for the allocation of transient accommodations tax revenues to the convention center enterprise special fund on a fiscal year basis.

SECTION 2. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Revenues collected under this chapter, except for revenues collected under section 237D-2(b), shall be distributed as follows, with the excess revenues to be deposited into the general fund:

- (1) 17.3 per cent of the revenues collected under this chapter shall be deposited into the convention center enterprise special fund estab-

- lished under section 201B-8; provided that beginning January 1, 2002, if the amount of the revenue collected under this paragraph exceeds \$33,000,000 in any ~~calendar~~ fiscal year, revenues collected in excess of \$33,000,000 shall be deposited into the general fund;
- (2) 34.2 per cent of the revenues collected under this chapter shall be deposited into the tourism special fund established under section 201B-11 for tourism promotion and visitor industry research; provided that for any period beginning on July 1, 2011, and ending on June 30, 2015, no more than \$69,000,000 per fiscal year shall be deposited into the tourism special fund established under section 201B-11; and provided further that beginning on July 1, 2002, of the first \$1,000,000 in revenues deposited:
- (A) Ninety per cent shall be deposited into the state parks special fund established in section 184-3.4; and
 - (B) Ten per cent shall be deposited into the special land and development fund established in section 171-19 for the Hawaii statewide trail and access program;
- provided that of the 34.2 per cent, 0.5 per cent shall be transferred to a sub-account in the tourism special fund to provide funding for a safety and security budget, in accordance with the Hawaii tourism strategic plan 2005-2015; provided further that of the revenues remaining in the tourism special fund after revenues have been deposited as provided in this paragraph and except for any sum authorized by the legislature for expenditure from revenues subject to this paragraph, beginning July 1, 2007, funds shall be deposited into the tourism emergency trust fund, established in section 201B-10, in a manner sufficient to maintain a fund balance of \$5,000,000 in the tourism emergency trust fund; and
- (3) 44.8 per cent of the revenues collected under this chapter shall be transferred as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent; provided that for any period beginning on July 1, 2011, and ending on June 30, 2015, the total amount transferred to the counties shall not exceed \$93,000,000 per fiscal year.

Revenues collected under section 237D-2(b) shall be deposited into the general fund. All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.

As used in this subsection, "fiscal year" means the twelve-month period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year."

SECTION 3. Unexpended and unencumbered moneys determined by the Hawaii tourism authority to be in excess of any unencumbered reserve remaining in the convention center enterprise special fund at the close of fiscal year 2011-2012 may be expended by the authority for repair and maintenance projects of the Hawaii convention center.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012; provided that the amendments made to section 237D-6.5(b), Hawaii Revised Statutes, by section 2 of this Act shall not be repealed on June 30, 2015, when section 237D-6.5, Hawaii Revised Statutes, is reenacted pursuant to Act 61, Session Laws of Hawaii 2009, and Act 103, Session Laws of Hawaii 2011.

(Approved July 6, 2012.)

ACT 244

H.B. NO. 1295

A Bill for an Act Relating to Business.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . UNLICENSED CONTRACTING OFFENSES

§708-A Unlicensed contracting activity. (1) A person commits the offense of unlicensed contracting activity if the person:

- (a) Engages in any activity that requires a contractor’s license under chapter 444 and is not a licensed contractor when engaging in the activity, other than an offense involving the inadvertent failure to renew a previously existing license; or
- (b) Uses any word, title, or representation to induce the false belief that the person is licensed under chapter 444 to engage in contracting activity.

(2) Unlicensed contracting activity is a misdemeanor.

(3) Each day the violation of this section continues after written notice of the violation to the unlicensed contractor shall constitute a distinct and separate offense.

(4) It is an affirmative defense to a prosecution under this section that the defendant was a licensed contractor performing activity outside the scope of the defendant’s contractor’s license. This defense shall not preclude any administrative or civil enforcement action for the unlicensed activity.

§708-B Habitual unlicensed contracting activity; felony. (1) A person commits the offense of habitual unlicensed contracting activity if the person has had two or more convictions within ten years, preceding the conduct for which the person is charged under this section, for unlicensed contracting activity in violation of section 436B-27 or 708-A, and:

- (a) Engages in any activity for which a contractor’s license is required under chapter 444, and is not licensed as a contractor under chapter 444 when engaging in the activity; or
- (b) Uses any word, title, or representation to induce the false belief that the person is licensed under chapter 444 to engage in contracting activity.

(2) A conviction for purposes of this section is a judgment on a verdict, a finding of guilt, or a judgment on a plea of guilty or nolo contendere. The convictions shall have occurred on separate dates and be for separate incidents on separate dates. At the time of the instant offense, the convictions shall not have been expunged by pardon, reversed, or set aside.

(3) Habitual unlicensed contracting activity is a class C felony.

(4) It is an affirmative defense to a prosecution under this section that the defendant was a licensed contractor performing activity outside the scope of the defendant's contractor's license. This defense shall not preclude any administrative or civil enforcement action for the unlicensed activity.

§708-C Unlicensed contractor fraud. (1) A person commits the offense of unlicensed contractor fraud if the person:

- (a) Engages in any activity that requires a contractor's license under chapter 444 and is not licensed as a contractor under chapter 444 when the person engages in the activity; and
- (b) While engaged in the activity, obtains or exerts control over the property of another by deception, with intent to deprive the other of the property.

(2) For purposes of this section, "deception," as defined in section 708-800, includes deception as to the person's status as a licensed contractor or as to permits required to engage in the activity.

§708-D Unlicensed contractor fraud in the first degree. (1) A person commits the offense of unlicensed contractor fraud in the first degree if the person commits unlicensed contractor fraud and the total value of the property over which the person obtains control is equal to or greater than \$20,000.

(2) Unlicensed contractor fraud in the first degree is a class B felony.

§708-E Unlicensed contractor fraud in the second degree. (1) A person commits the offense of unlicensed contractor fraud in the second degree if the person commits unlicensed contractor fraud and the total value of the property over which the person obtains control is less than \$20,000.

(2) Unlicensed contractor fraud in the second degree is a class C felony.

§708-F Unlicensed contractor fraud; valuation of property. For purposes of unlicensed contractor fraud, the value of the property shall be the greater of:

- (1) The value of property as provided in section 708-801; or
- (2) The total value of all moneys and any assets of value paid or lost by the victim or victims pursuant to the same scheme or course of conduct."

SECTION 2. Section 436B-27, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person, who engages in an activity requiring a license issued by the licensing authority and who fails to obtain the required license, or who uses any word, title, or representation to induce the false belief that the person is licensed to engage in the activity, other than a circumstance of first instance involving the inadvertent failure to renew a previously existing license, shall be guilty of a misdemeanor ~~and be subject to a fine of not more than \$1,000 or imprisoned not more than one year, or both,~~ and each ~~day's violation~~ day of unlicensed activity shall be deemed a separate offense."

SECTION 3. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 245

H.B. NO. 2502

A Bill for an Act Relating to Mortgage Servicers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 454M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§454M- Registration with Nationwide Mortgage Licensing System. The commissioner may require all mortgage servicers to register with the Nationwide Mortgage Licensing System.”

SECTION 2. Section 454M-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Nationwide Mortgage Licensing System” has the same meaning as defined in section 454F-1.”

SECTION 3. Section 454M-2, Hawaii Revised Statutes, is amended to read as follows:

“§454M-2 License required. (a) No person except those exempted under this chapter shall engage in the business of mortgage servicing without a license as provided in this chapter.

(b) No person shall engage in the business of mortgage servicing in this State unless the person providing services has a physical presence in the State pursuant to section 454M-5(a)(5).

(c) No person licensed as a mortgage servicer shall provide mortgage loan modifications or any other services that would require licensing pursuant to chapter 454F without first complying with the licensure requirements under chapter 454F.”

SECTION 4. Section 454M-4, Hawaii Revised Statutes, is amended to read as follows:

“§454M-4 License; fees; renewals; voluntary surrender of license. (a) An applicant for licensure shall file an application on a form prescribed by the Nationwide Mortgage Licensing System or by the commissioner and shall pay an application fee of \$500. Each license shall expire on June 30 of each calendar year. A license may be renewed by filing a renewal statement on a form prescribed by the Nationwide Mortgage Licensing System or by the commissioner and paying a renewal fee of \$250, on or before July 1 for licensure for the following year.

(b) To fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with the Nationwide Mortgage Licensing System or other entities designated by the Nationwide Mortgage Licensing System to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(c) To the extent reasonably necessary to participate in the Nationwide Mortgage Licensing System, the commissioner may modify any or all of the requirements of section 454M-4(e) and (f).

(d) The commissioner may use the Nationwide Mortgage Licensing System as an agent for requesting information from and distributing information to the United States Department of Justice, any governmental agency, or any other source, as directed by the commissioner.

~~[(b)]~~ (e) The applicant shall submit any other information that the commissioner may require, including the applicant's:

- (1) Form and place of organization;
- (2) Tax identification number; and
- (3) Proposed method of doing business.

The applicant shall disclose whether the applicant or any of its officers, directors, employees, managers, agents, partners, or members have ever been issued or been the subject of an injunction or administrative order pertaining to any aspect of the lending business, have ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business, or have ever been convicted of any felony.

~~[(e)]~~ (f) A mortgage servicer licensed under this chapter may voluntarily cease business and surrender its license by giving written notice to the commissioner of its intent to surrender its mortgage servicer license. Notice pursuant to this subsection shall be given at least thirty days before the surrender of the license and shall include:

- (1) The date of surrender;
- (2) The name, address, telephone number, facsimile number, and electronic address of a contact individual with knowledge and authority sufficient to communicate with the commissioner regarding all matters relating to the licensee during the period that it was licensed pursuant to this chapter;
- (3) The reason or reasons for surrender;
- (4) The original license issued pursuant to this chapter to the mortgage servicer; and
- (5) If applicable, a copy of all notices to affected borrowers required by the Real Estate Settlement Procedures Act, Title 12 United States Code section 2601 et seq., or by regulations adopted pursuant to the Real Estate Settlement Procedures Act, of the assignment, sale, or transfer of the servicing of all relevant loans that the licensee is currently servicing under the license being surrendered.

Voluntary surrender of a license shall be effective upon the date of surrender specified on the written notice to the commissioner as required by this subsection; provided that if a mortgage servicer is required to assign, sell, or transfer the servicing of any loans, the voluntary surrender of the mortgage servicer's license shall be effective upon the effective date of the assignment, sale, or transfer of the servicing of all loans."

SECTION 5. Section 454M-6, Hawaii Revised Statutes, is amended to read as follows:

“§454M-6 Prohibited activities. (a) It shall be unlawful for any mortgage servicer in the course of any mortgage loan transaction:

- (1) To misrepresent or conceal material facts, to make false promises, or to pursue a course of misrepresentation through its agents or otherwise;
- (2) To engage in any transaction, practice, or course of business that is not in good faith, does not constitute fair dealing, or that constitutes a fraud upon any person, in connection with the servicing, purchase, or sale of any mortgage loan;
- (3) To fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by sections 6 and 10 of the Real Estate Settlement Procedures Act, 12 United States Code sections 2605 and 2609, and regulations adopted thereunder by the Secretary of Housing and Urban Development; or
- (4) To fail to comply with applicable federal laws and regulations related to mortgage servicing.

(b) It shall be unlawful for any mortgage servicer to provide any mortgage loan modifications or other services that would require licensing pursuant to chapter 454F, unless the mortgage servicer is licensed under chapter 454F.”

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 246

H.B. NO. 1543

A Bill for an Act Relating to the Motor Vehicle Industry Licensing Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that safeguards need to be enacted due to actual and threatened surcharges made by motor vehicle manufacturers against dealers, both those that have sought increased warranty reimbursement under Hawaii law and those that have not sought increased warranty reimbursement.

SECTION 2. Section 437-56, Hawaii Revised Statutes, is amended to read as follows:

“§437-56 Reimbursement for parts. (a) In no event shall any manufacturer or distributor pay its dealers a markup on parts for warranty work that is less than that charged by the dealer to the retail customers of the dealer; provided that such dealer’s retail parts markup is not unreasonable when compared with that of same line make authorized franchise dealers of the manufacturer or distributor for identical merchandise or services in the State.

(b) The retail markup charged by the dealer shall be established by submitting to the manufacturer or distributor a sufficient quantity of numerically consecutive repair orders from the most recent months to provide one hundred qualifying customer-paid repair orders. For a dealer unable to provide one hundred qualifying customer-paid repair orders out of all numerically consecutive repair orders within the two-month period prior to the submission, the dealer shall submit customer service repair orders of all types, including customer pay, warranty, and internal, for that two-month period. The repair orders shall contain the price and percentage markup. Dealers shall declare in their submission the average markup the dealer is declaring as its new parts reimbursement rate. The declared parts reimbursement markup shall take effect within ninety days after initial submission to the manufacturer or distributor and shall be presumed to be fair and reasonable. However, the manufacturer or distributor may make reasonable requests for additional information supporting the submission. The ninety-day timeframe in which the manufacturer or distributor shall make the declared parts reimbursement markup effective shall commence following receipt from the dealer of any reasonably requested supporting information. The dealer shall not request a change in the parts reimbursement markup more than once every twelve months.

(c) In determining qualifying repair orders for parts, the following work shall not be included: repairs for manufacturer or distributor special events; repairs covered by any insurance or service contract; federal, state, or local government legislated vehicle emission or safety inspections; parts sold at wholesale or repairs performed at wholesale, which shall include any sale or service to a fleet of vehicles; engine assemblies and transmission assemblies; routine maintenance not covered under any retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs; nuts, bolts, fasteners, and similar items that do not have an individual part number; tires; and vehicle reconditioning.

(d) Dealers shall have at least thirty days after the repair work is completed to submit a claim for approval. All claims made by the dealers for compensation for delivery, preparation, and warranty work shall be approved or disapproved and if approved, paid within forty-five days after receipt by a manufacturer or distributor of a properly completed claim. All sale incentive claims shall be approved or disapproved and if approved, paid within sixty days after receipt by a manufacturer or distributor of a properly completed claim. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Failure to disapprove a claim within the required timeframe constitutes approval of the claim.

(e) A manufacturer or distributor may not recover, or attempt to recover, from dealers its cost for reimbursing a dealer for warranty work as required by this section.

(f) For the purposes of this section, the director of commerce and consumer affairs shall:

- (1) Conduct a review of the costs of the repairs of motor vehicles, including the prices charged by dealers for performing repairs under warranty and repairs not under warranty; and
- (2) Compare such costs to repairs performed by non-dealers."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

A Bill for an Act Relating to Professional and Vocational Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 436B, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§436B- Licensure by endorsement or licensure by reciprocity; experience requirements. (a) Unless otherwise provided by law, an applicant for licensure by endorsement or licensure by reciprocity who is a nonresident military spouse may demonstrate competency in a specific profession or vocation as determined by the licensing authority in lieu of a requirement that the applicant has worked or practiced in that profession or vocation for a specified period of time prior to the application for licensure by endorsement or licensure by reciprocity.

(b) The licensing authority shall expedite consideration of the application and issuance of a license by endorsement or license by reciprocity to a nonresident military spouse who meets the requirements of this section.

§436B- Licensure by endorsement or licensure by reciprocity; initial acceptance by affidavit; temporary license. (a) If a nonresident military spouse holds a current license in another state, district, or territory of the United States with licensure requirements that the licensing authority determines are equivalent to or exceed those established by the licensing authority of this State, that nonresident military spouse shall receive a license pursuant to applicable statutes or requirements of the licensing authority of this State regarding licensure by endorsement or licensure by reciprocity; provided that the nonresident military spouse:

- (1) Has not committed an act in any jurisdiction that would have constituted grounds for the limitation, suspension, or revocation of a license; has never been censured or had other disciplinary action taken; has not had an application for licensure denied; or has not refused to practice a profession or vocation for which the nonresident military spouse seeks licensure;
- (2) Has not been disciplined by a licensing or credentialing entity in another jurisdiction; is not the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing or credentialing entity in another jurisdiction; and has not surrendered membership on any professional staff in any professional association, society, or faculty for another state or licensing jurisdiction while under investigation or to avoid adverse action for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action in this State;
- (3) Pays any fees required by the licensing authority of this State; and
- (4) Submits with the application a signed affidavit stating that application information, including necessary prior employment history, is true and accurate. Upon receiving the affidavit, the licensing authority shall issue the license to the nonresident military spouse and may revoke the license at any time if the information provided in the application is found to be false.

(b) The licensing authority shall issue to the nonresident military spouse a temporary license to allow the nonresident military spouse to perform specified services, under the supervision of a professional licensed by this State if appropriate, while completing any requirements necessary for licensure in this State;

provided that a temporary license shall only be issued in those professions where credentials, experience, or passage of a national exam is substantially equivalent to or exceed those established by the licensing authority of this State.

(c) The licensing authority shall expedite consideration of the application and issuance of a license by endorsement, license by reciprocity, or temporary license to a nonresident military spouse who meets the requirements of this section.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 248

H.B. NO. 2258

A Bill for an Act Relating to Professional and Vocational Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 436B, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§436B- Licensure; acceptance of military education, training, or service. Notwithstanding any law to the contrary, every licensing authority subject to this chapter, upon presentation of satisfactory evidence by an applicant, shall consider relevant education, training, or service completed by an individual as a member of the armed forces or reserves of the United States, the national guard of any state, the military reserves of any state, or the navy militia of any state as part of the evaluation process toward the qualification requirements to receive the license. Evidence presented for consideration for fulfillment or partial fulfillment of licensing requirements shall demonstrate substantial equivalency to state standards.”

SECTION 2. The licensing administrator of the professional and vocational licensing division of the department of commerce and consumer affairs shall communicate the intent and parameters of this Act to each licensing authority and shall submit a report detailing plans for the implementation of this Act to the legislature no later than twenty days prior to the convening of the regular session of 2013.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2012, and shall be repealed on June 30, 2022.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Consumer Protection.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that members of the military and their dependents are increasingly vulnerable to unscrupulous and predatory lending practices. These practices create a cycle of debt, thus detracting from military members' financial well being and military readiness. The John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law No. 109-364) contains provisions that place limits on the terms of credit that may be extended to military members and their dependents. This federal act and the regulations that implement it are designed to protect military members and their families from unfair lending practices that are commonly used by issuers of payday loans, vehicle title loans, and tax refund anticipation loans. While the federal regulations do not designate an enforcement agency within the federal government, they do not limit states from enforcing the federal law. Therefore, the legislature also finds that assistance from state regulators is essential to enforcing the law and protecting military service members and dependents from fraud, deception, and abusive practices. The legislature further finds that, in order to enforce the law, state authorities should be authorized to access the Federal Trade Commission's Military Sentinel Network, which provides a secure database of allegations of fraud, deception, and abusive practices reported by military service members.

The purpose of this Act is to authorize the director of commerce and consumer affairs to enforce certain federal laws that protect military members and their families from abusive lending practices.

SECTION 2. Chapter 481B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§481B- Protection of military; lending practices. (a) The director of commerce and consumer affairs may enforce Title 10 United States Code section 987, (section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law No. 109-364), and federal regulations promulgated thereunder, including but not limited to Title 32 Code of Federal Regulations Part 232.

(b) The director of commerce and consumer affairs may enter into an agreement with the United States Federal Trade Commission to allow the director to access the Military Sentinel Network maintained by the Federal Trade Commission for the purpose of enforcing subsection (a)."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 250

S.B. NO. 2767

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:16-105, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read:

“Insured” means any named insured, any additional insured, any vendor, any lessor, or any other party identified as an insured under the policy.

“Receiver” includes liquidator, rehabilitator, conservator, or ancillary receiver, as applicable.

“Self-insurer” means a person that covers its liability through a qualified individual or group self-insurance program or any other formal program created for the specific purpose of covering liabilities typically covered by insurance.”

2. By amending the definitions of “covered claim” and “net direct written premiums” to read:

“Covered claim”:

(1) Means an unpaid claim, including one for unearned premiums, submitted by a claimant, that arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this part applies issued by an insurer, if the insurer becomes an insolvent insurer after July 1, 2000, and:

(A) The claimant or insured is a resident of this State at the time of the insured event; provided that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which its principal place of business is located at the time of the insured event; or

(B) The claim is a first party claim for damage to property with a permanent location in this State; and

(2) Shall not include:

(A) Any amount awarded as punitive or exemplary damages;

(B) Any amount sought as a return of premium under any retrospective rating plan;

(C) Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries, reinsurance recoveries, contribution, indemnification, or otherwise;

(D) Any first party claims by an insured whose net worth exceeds \$25,000,000 on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer; provided that an insured's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis; [or]

(E) Any first party claims by an insured who is an affiliate of the insolvent insurer[-];

(F) Any fee or other amount relating to goods or services sought by or on behalf of any attorney or other provider of goods or services retained by the insolvent insurer or an insured prior to the date it was determined to be insolvent;

(G) Any fee or other amount sought by or on behalf of any attorney or other provider of goods or services retained by any insured

or claimant in connection with the assertion or prosecution of any claim, covered or otherwise, against the association;

(H) Any claims for interest; or

(I) Any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred but not reported losses.

"Net direct written premiums" means direct gross premiums written in this State on insurance policies to which this part applies, including policy and membership fees, less [return] the following amounts:

(1) Return premiums [thereon];

(2) Premiums on policies not taken; and [dividends]

(3) Dividends paid or credited to policyholders on such direct business.

Net direct written premiums ~~[do]~~ shall not include premiums on contracts between insurers or reinsurers."

SECTION 2. Section 431:16-108, Hawaii Revised Statutes, is amended to read as follows:

"§431:16-108 Powers and duties of the association. (a) The association shall:

(1) Be obligated to the extent of the covered claims existing prior to the order of liquidation and arising within thirty days after the order of liquidation, or before the policy expiration date if less than thirty days after the order of liquidation, or before the insured replaces the policy or causes its cancellation, if the insured does so within thirty days of the order of liquidation. The obligation shall be satisfied by paying to the claimant an amount as follows:

(A) The full amount of a covered claim for benefits under a workers' compensation insurance coverage;

(B) An amount not exceeding \$10,000 per policy for a covered claim for the return of unearned premium; or

(C) An amount not exceeding \$300,000 per claim for all other covered claims.

In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the stated policy limit of the insolvent insurer under the policy from which the claim arises. Notwithstanding any other provisions of this part, a covered claim shall not include a claim filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer. Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit;

(2) Be deemed the insurer, but only to the extent of its obligation on covered claims and to that extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including but not limited to the right to pursue and retain salvage and subrogation recoverable on covered claim obligations to the extent paid by the association;

(3) Assess insurers amounts necessary to pay the obligations of the association under paragraph (1) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under section 431:16-113, and other

expenses authorized by this part. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two per cent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order that it may deem reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when the payment will not reduce capital or surplus below required minimums. Payments shall be refunded to those companies receiving larger assessments by virtue of the deferment, or at the election of the companies, credited against future assessments. Each member insurer may set off against any assessment payments authorized by the administrator of the association to be made on covered claims and expenses incurred in the payment of the claims by the member insurer;

- (4) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which the settlements, releases, and judgments may be properly contested. The association may appoint or substitute and direct legal counsel retained under liability insurance policies for the defense of covered claims;
- (5) Notify the persons as the commissioner directs under section 431:16-110(b)(1);
- (6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer;
- (7) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and pay the other expenses of the association authorized by this part; and
- (8) Have the authority, notwithstanding sections 431:10C-110 and 431:10C-111, to cancel all policies issued by an insolvent insurer. Covered claims under these policies shall be paid by the association in an amount not to exceed the stated policy limit of the insolvent

insurer under the policy from which the claim arises, or as provided under paragraph (1)(A) to (C), whichever is less.

- (b) The association may:
- (1) Employ or retain the persons as are necessary to handle claims and perform other duties of the association;
- (2) Borrow funds necessary to effect the purposes of this part in accord with the plan of operation;
- (3) Sue or be sued;
- (4) Negotiate and become a party to the contracts as are necessary to carry out the purpose of this part; and
- (5) Perform all other acts as are necessary or proper to effectuate the purpose of this part.

(c) Except for actions by the receiver, all actions relating to or arising out of this part against the association shall be brought in the courts in this State. The courts in this State shall have exclusive jurisdiction over all actions relating to or arising out of this part against the association.

The exclusive venue in any action by or against the association shall be the circuit court of the first judicial circuit of this State. The association, at its option, may waive this venue as to specific actions."

SECTION 3. Section 431:16-112, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person having a claim against an insurer whether or not the insurer is a member insurer under any provision in an insurance policy other than a policy of an insolvent insurer [~~which~~] that is also a covered claim, shall be required to exhaust first the person's rights under the policy. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under the insurance policy. If there are any other policies issued by an insolvent insurer applicable to the covered claim, then all such policies [~~must first~~] shall be exhausted before any claim can be deemed a covered claim subject to being covered by the association.

- (1) A claim under a policy providing liability coverage to a person who may be jointly and severally liable as a joint tortfeasor with a person covered under the policy of the insolvent insurer that gives rise to the covered claim shall be considered to be a claim arising from the same facts, injury, or loss that gave rise to the covered claim against the association.
- (2) A claim under an insurance policy other than a life insurance policy shall include, but is not limited to:
 - (A) A claim against a health maintenance organization, a hospital plan corporation, a professional health service corporation, or disability insurance policy; and
 - (B) Any amount payable by or on behalf of a self-insurer.
- (3) The person insured by the insolvent insurer's policy may not be pursued by a third-party claimant for any amount paid to the third party by which the association's obligation is reduced by the application of this section."

SECTION 4. Section 431:16-203, Hawaii Revised Statutes, is amended to read as follows:

"§431:16-203 Coverage and limitations. (a) This part shall provide coverage[.] for the policies and contracts specified in subsection (b) to:

- (1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under paragraph (2); ~~and~~
- (2) Persons who are owners of or certificate holders under such policies or contracts, except structured settlement annuities, and who:
 - (A) Are residents~~;~~ of this State; or
 - (B) Are not residents~~;~~ but only under all of the following conditions; provided that:
 - (i) The ~~insurers which~~ insurer that issued [such] the policies or contracts [are] is domiciled in this State;
 - (ii) ~~[Such insurers never held a license or certificate of authority in the states in which such persons reside;~~
 - (iii) ~~Such states have associations similar to the association created by this part; and~~
 - (iv) ~~Such persons are not eligible for coverage by such associations.] The state in which the persons reside has associations similar to the association created by this part; and~~
 - (iii) The persons are not eligible for coverage by an association in any other state because the insurer was not licensed in the state at the time specified in the state's guaranty association law;
- (3) For structured settlement annuities specified in subsection (b), paragraphs (1) and (2) of this subsection shall not apply, and this part, except as provided in paragraphs (4) and (5) of this subsection, shall provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:
 - (A) Is a resident of this State, regardless of where the contract owner resides; or
 - (B) Is not a resident; provided that:
 - (i) The contract owner of the structured settlement annuity is a resident and neither the payee, beneficiary, nor contract owner is eligible for coverage by the association in the state in which the payee or contract owner resides; or
 - (ii) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this State and the state in which the contract owner resides has an association similar to the association created by this part, and neither the payee, beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides;
- (4) This part shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this State, if the payee or beneficiary is afforded any coverage by the association of another state; and
- (5) This part is intended to provide coverage to a person who is a resident of this State and, in certain circumstances, to a nonresident. To avoid duplicate coverage, if a person who would otherwise receive coverage under this part is provided coverage under the laws of any other state, the person shall not be provided coverage under this part. In determining the application of the provisions of this paragraph in situations where a person could be covered by the associa-

tion of more than one state, whether as an owner, payee, beneficiary, or assignee, this part shall be construed in conjunction with other state laws to result in coverage by only one association.

- (b)(1) This part shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, accident and health or sickness, or¹ annuity~~[-, supplemental]~~ policies or contracts, ~~[and]~~ for certificates under direct group life, accident and health or sickness, or annuity policies [and] or contracts, and for supplemental contracts to any of these, in each case issued by member insurers except as limited by this part[;]. Annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities, and any immediate or deferred annuity contracts.
- (2) This part shall not provide coverage for:
- (A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract ~~[holder;]~~ owner;
 - (B) Any policy or contract of reinsurance, unless assumption certificates have been issued[;] pursuant to the reinsurance policy or contract;
 - (C) Any portion of a policy or contract to the extent that the rate of interest on which it is based:
 - (i) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and
 - (ii) On or after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;
 - (D) Any portion of a policy or contract issued to a plan or program of an employer, association, or [similar entity] other person to provide life, accident and health or sickness, or annuity benefits to its employees ~~[or], members, or other persons~~ to the extent that ~~[such]~~ the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or ~~[similar entity]~~ other person under:
 - (i) A Multiple Employer Welfare Arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;
 - (ii) A minimum premium group insurance plan;
 - (iii) A stop-loss group insurance plan; or
 - (iv) An administrative services only contract;
 - (E) Any portion of a policy or contract to the extent that it provides dividends ~~[or], experience rating credits, or voting rights,~~ or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of such policy or contract;
 - (F) Any policy or contract issued in this State by a member insurer at a time when it was not licensed or did not have a certifi-

cate of authority to issue such policy or contract in this State;
[and]

- (G) ~~[Any annuity contract or group annuity certificate which is not issued to or owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.] Any portion of a policy or contract to the extent that the assessments required by this part with respect to the policy or contract are preempted or otherwise not permitted by federal or state law;~~
- (H) Any obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including without limitation:
 - (i) Claims based on marketing materials;
 - (ii) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;
 - (iii) Misrepresentations of or regarding policy benefits;
 - (iv) Extra-contractual claims; or
 - (v) A claim for penalties or consequential or incidental damages;
- (I) Any contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer;
- (J) Any unallocated annuity contract;
- (K) Any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but that have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this part. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under section 431:16-403(b)(2)(L), the interest or change in value determined by using the procedures defined in the policy or contract shall be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency and shall not be subject to forfeiture; or
- (L) Any policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Part C or Part D of subchapter XVIII, chapter 7, Title 42 of the United States Code, commonly known as medicare part C and D, or any regulations adopted pursuant thereto.

(c) The benefits for which the association may become liable shall in no event exceed the lesser of:

- (1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer, or
- (2) With respect to any one life, regardless of the number of policies or contracts:

- (A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;
 - ~~[(B) \$100,000 in accident and health or sickness insurance benefits, including any net cash surrender and net cash withdrawal values;~~
 - ~~(C) \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;~~
- provided that in no event shall the association be liable to expend more than \$300,000 in the aggregate with respect to any one life under subparagraphs (A), (B), and (C).]

(B) In accident and health or sickness insurance benefits:

- (i) \$100,000 for coverages not defined as disability insurance or basic hospital, medical, and surgical insurance, or major medical insurance or long-term care insurance, including any net cash surrender and net cash withdrawal values;
- (ii) \$300,000 for disability insurance and \$300,000 for long-term care insurance; or
- (iii) \$500,000 for basic hospital, medical, and surgical insurance or major medical insurance;
- (C) \$250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or
- (D) With respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, \$250,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any.

(d) In no event shall the association be obligated to cover more than:

- (1) An aggregate of \$300,000 in benefits with respect to any one life under subsection (c) except with respect to benefits for basic hospital, medical, and surgical insurance and major medical insurance under subsection (c)(2)(B), in which case the aggregate liability of the association shall not exceed \$500,000 with respect to any one individual; or
- (2) \$5,000,000 in benefits with respect to one owner or multiple non-group policies of life insurance, regardless of:
 - (A) The number of policies and contracts held by the owner;
 - (B) Whether the policy owner is an individual, firm, corporation, or other person; and
 - (C) Whether the persons insured are officers, managers, employees, or other persons.

(e) The limitations set forth in this section are limitations on the benefits for which the association is obligated before taking into account its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this part may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(f) In performing its obligations to provide coverage under section 431:16-208, the association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered

policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract."

SECTION 5. Section 431:16-205, Hawaii Revised Statutes, is amended as follows:

1. By adding seven new definitions to be appropriately inserted and to read:

"Authorized assessment" or "authorized" when used in the context of assessments means a resolution by the board of directors that has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount.

"Called assessment" or "called" when used in the context of assessments means a notice that has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice.

"Extra-contractual claims" shall include, but not be limited to, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorneys' fees and costs.

"Owner", "policy owner", or "contract owner" means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms "owner", "contract owner", and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.

"Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

"State" means a state, the District of Columbia, Puerto Rico, or a United States possession, territory, or protectorate.

"Structured settlement annuity" means an annuity purchased to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant."

2. By amending the definitions of "covered policy", "impaired insurer", "member insurer", "person", "premiums", "resident", and "supplemental contract" to read:

"Covered policy" means any policy or contract [within the scope of this part] or portion of a policy or contract for which coverage is provided under section 431:16-203.

"Impaired insurer" means a member insurer that after July 1, 1988, is not an insolvent insurer, and[

(1) Is deemed by the commissioner to be potentially unable to fulfill its contractual obligations; or

(2) Is] is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

"Member insurer" means any insurer licensed or who holds a certificate of authority to transact in this State any kind of insurance for which coverage is provided under section 431:16-203, and includes any insurer whose license or certificate of authority in this State may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

(1) A nonprofit hospital or medical service organization;

(2) A health maintenance organization;

(3) A fraternal benefit society;

(4) A mandatory state pooling plan;

- (5) A mutual assessment company or any entity that operates on an assessment basis;
- (6) An insurance exchange; ~~or~~
- (7) An organization that has a certificate or license limited to the issuance of charitable gift annuities; or
- ~~[(7)]~~ (8) Any entity similar to any of the above.

"Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

"Premiums" means amounts and considerations received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. Premiums does not include any amounts or consideration received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under section 431:16-203(b) except that assessable premium shall not be reduced on accounts under section 431:16-203(b)(2)(C) relating to interest limitations and section 431:16-203(c)(2) relating to limitations with respect to any one life and any one contract holder. Premiums shall also not include:

- (1) Premiums on an unallocated annuity contract; or
- (2) Premiums in excess of \$5,000,000, regardless of:
 - (A) The number of policies or contracts held by the owner, with respect to multiple non-group policies of life insurance owned by one owner;
 - (B) Whether the policy owner is an individual, firm, corporation, or other person; and
 - (C) Whether the persons insured are officers, managers, employees, or other persons.

"Resident" means ~~[any]~~ a person to whom a contractual obligation is owed and who resides in this State ~~[at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed.]~~ on the date of entry of a court order that determines a member insurer to be an impaired insurer or an insolvent insurer. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States who are:

- (1) Residents of foreign countries; or
- (2) Residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this part.

shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.

"Supplemental contract" means ~~[any]~~ a written agreement entered into for the distribution of ~~[policy or contract]~~ proceeds~~[-]~~ under a life, health, or annuity policy or life, health, or annuity contract."

SECTION 6. Section 431:16-206, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this State. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association."

SECTION 7. Section 431:16-208, Hawaii Revised Statutes, is amended to read as follows:

"§431:16-208 Powers and duties of the association. (a) If a member insurer is an impaired [domestic] insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the commissioner, and that are, except in cases of court ordered conservation or rehabilitation, also approved by the impaired insurer:

- (1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer;
 - (2) Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate subsection (a)(1) and assure payment of the contractual obligations of the impaired insurer pending action under subsection (a)(1); or
 - (3) Loan money to the impaired insurer.
- ~~[(b)(1) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in paragraph (2), the association shall, in its discretion, either:~~
- ~~(A) Take any of the actions specified in subsection (a), subject to the conditions therein, or~~
 - ~~(B) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for: accident and health or sickness claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.~~
- (2) The association shall be subject to the requirements of paragraph (1) only if:
- ~~(A) The laws of the impaired insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations;~~
 - ~~(i) The delinquency proceeding shall not be dismissed;~~
 - ~~(ii) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management; and~~
 - ~~(iii) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and~~
 - ~~(B) (i) If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this State, or;~~
 - ~~(ii) If the impaired insurer is a foreign or alien insurer:~~
 - ~~(I) It has been prohibited from soliciting or accepting new business in this State;~~
 - ~~(II) Its certificate of authority has been suspended or revoked in this State, and~~
 - ~~(III) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.~~

(e) (b) If a member insurer is an insolvent insurer, the association shall, in its discretion~~[- either]:~~

- (1) (A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or
- (B) Assure payment of the contractual obligations of the insolvent insurer; and
- (C) Provide such moneys, pledges, guarantees, or other means as are reasonably necessary to discharge such duties; or
- (2) ~~[With respect only to life and accident and health or sickness insurance policies, provide]~~ Provide benefits and coverages in accordance with ~~[subsection (d)-~~

~~(d) When proceeding under subsection (b)(1)(B) or (c)(2), the association shall, with respect to only life and accident and health or sickness insurance policies:~~

- (4) ~~Assure~~ the following provisions:

(A) With respect to life and accident and health or sickness insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under the policies of the insolvent insurer, for claims incurred:

~~[(A)]~~ (i) With respect to group policies~~[-]~~ and contracts, not later than the earlier of the next renewal date under ~~[such] the~~ policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to ~~[such] the~~ policies;

~~[(B)]~~ (ii) With respect to ~~[individual]~~ non-group policies, contracts, and annuities, not later than the earlier of the next renewal date (if any) under ~~[such] the~~ policies or contracts or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to ~~[such] the~~ policies~~[-]~~ or contracts.

~~[(2)]~~ (B) Make diligent efforts to provide all known insureds or ~~[group policyholders]~~ annuitants (for non-group policies and contracts), or group policy owners with respect to group policies and contracts, thirty ~~[days²]~~ days notice of the termination of the benefits provided~~[- and]~~.

~~[(3)]~~ (C) With respect to ~~[individual]~~ non-group life and accident and health or sickness insurance policies[-] and annuities covered by the association, make available to each known insured~~[-]~~ or annuitant, or owner if other than the insured~~[-]~~ or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with ~~[paragraph (4)-]~~ subparagraph (D), if the insureds or annuitants had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.

- [(4)—(A)] (D) (i) In providing the substitute coverage required under ~~[paragraph (3),]~~ subparagraph (C), the association may offer either to reissue the terminated coverage or to issue an alternative policy.
- [(B)] (ii) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.
- [(C)] (iii) The association may reinsure any alternative or reissued policy.
- [(5)—(A)] (E) (i) Alternative policies adopted by the association shall be subject to the approval of the domiciliary commissioner~~[-]~~ or the receivership court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.
- [(B)] (ii) Alternative policies shall contain at least the minimum statutory provisions required in this State and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.
- [(C)] (iii) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.
- [(6)] (F) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner or by a court of competent jurisdiction.
- [(7)] (G) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.
- [(e)] (H) When proceeding under ~~[subsections (b)(1)(B) or (e)]~~ subsection (b)(2) with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 431:16-203(b)(2)(C).

[(f)] (c) Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the association's obligations under ~~[such]~~ the policy or coverage under this part with respect to ~~[such]~~ the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this part.

~~[(g)]~~ (d) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of such order.

~~[(h)]~~ (e) The protection provided by this part shall not apply where any guaranty protection is provided to residents of this State by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this State.

~~[(i)]~~ (f) In carrying out its duties under ~~[subsections (b) and (e);]~~ subsection (b), the association may, subject to approval by ~~[the]~~ a court~~[:]~~ in this State:

- (1) Impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this part are less than the amounts needed to assure full and prompt performance of the association's duties under this part, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest; and
- (2) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of any moratorium or moratorium charge imposed by the receivership court on the payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, except that the association may not defer the payment for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

~~[(j)]~~ (g) If the association fails to act within a reasonable period of time as provided in ~~[subsections (b)(1)(B), (e) and (d);]~~ subsection (b), the commissioner shall have the powers and duties of the association under this part with respect to ~~[impaired or] the insolvent [insurers:] insurer.~~

~~[(k)]~~ (h) The association may render assistance and advice to the commissioner, upon the commissioner's request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

~~[(l)]~~ (i) The association shall have standing to appear or intervene before any court or agency in this State with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this part~~[-]~~ or with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before [a] any court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over

[a third party] any person or property against whom the association may have rights through subrogation [of the insurer's policyholders.] or otherwise.

~~[(m)(4)]~~ (j)(1) Any person receiving benefits under this part shall be deemed to have assigned the rights under, and any causes of action ~~[relating to,]~~ against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this part, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and causes of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this part upon such person.

(2) The subrogation rights of the association under this section shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this part.

(3) In addition to ~~[items]~~ paragraphs (1) and (2), the association shall have all common law rights of subrogation and any other equitable or legal remedy ~~[which]~~ that would have been available to the impaired or insolvent insurer ~~[or holder of a policy or contract with respect to such policy or contracts], or owner, beneficiary, or payee of a policy or contract with respect to the policy or contracts.~~

~~(4)~~ If the preceding provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portion thereof, covered by the association.

~~(5)~~ If the association has provided benefits with respect to a covered obligation and a person recovers amounts to which the association has rights as described in the preceding paragraphs of this subsection, the person shall pay to the association the portion of the recovery attributable to the policies, or portion thereof, covered by the association.

~~[(n)]~~ (k) The association may:

(1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 431:16-209 and to settle claims or potential claims against it;

(3) Borrow money to effect the purposes of this part; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(4) Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this part;

(5) Take such legal action as may be necessary to avoid payment of improper claims~~[-and]~~ or recover payment of improper claims;

(6) Exercise, for the purposes of this part and to the extent approved by the commissioner, the powers of a domestic life or accident and health or sickness insurer, but in no case may the association issue

insurance policies or annuity contracts other than those issued to perform its obligations under this part[-];

- (7) Organize itself as a corporation or in other legal form permitted by the laws of the State;
- (8) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this part with respect to the person, and the person shall promptly comply with the request; and
- (9) Take other necessary or appropriate action to discharge its duties and obligations under this part or to exercise its powers under this part.

~~(e)~~ (l) The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

(m) With respect to covered policies for which the association becomes obligated after an entry of an order of liquidation or rehabilitation, the association may elect to succeed to the rights of the insolvent insurer arising after the date of the order of liquidation or rehabilitation under any contract of reinsurance to which the insolvent insurer was a party, to the extent that the contract provides coverage for losses occurring after the date of the order of liquidation or rehabilitation. As a condition to making this election, the association shall pay all unpaid premiums due under the contract for coverage relating to periods before and after the date of the order of liquidation or rehabilitation.

(n) The board of directors of the association shall have discretion and shall exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this part in an economical and efficient manner.

(o) Where the association has arranged or offered to provide the benefits of this part to a covered person under a plan or arrangement that fulfills the association's obligations under this part, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(p) Venue in a suit against the association arising under this part shall be in the circuit court of the first circuit. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this part.

(q) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsection (a) or (b), the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

- (1) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value;
- (2) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract; and
- (3) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms."

SECTION 8. Section 431:16-209, Hawaii Revised Statutes, is amended to read as follows:

“§431:16-209 Assessments. (a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty days after prior written notice to the member insurers and shall accrue interest at eighteen per cent per annum on and after the due date.

(b) There shall be two assessments, as follows:

(1) Class A assessments shall be ~~[made]~~ authorized and called for the purpose of meeting administrative and legal costs, and other expenses and examinations conducted under the authority of section 431:16-212(e). Class A assessments may be ~~[made]~~ authorized and called whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be ~~[made]~~ authorized and called to the extent necessary to carry out the powers and duties of the association under section 431:16-208 with regard to an impaired or an insolvent insurer.

(c)(1) The amount of any Class A assessment shall be determined by the board of directors and may be ~~[made]~~ authorized and called on a pro rata or non-pro rata basis. If pro rata, the board of directors may provide that it be credited against future Class B assessments. A non-pro rata assessment shall not exceed ~~[\$150]~~ \$300 per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board of directors in its sole discretion as being fair and reasonable under the circumstances.

(2) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this State by each assessed member insurer ~~[[on]]~~ on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to ~~[such]~~ the premiums received on business in this State for ~~[such]~~ the calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be ~~[made]~~ authorized or called until necessary to implement the purposes of this part. Classification of assessments under subsection (b) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board of directors, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is

abated, or deferred in whole or in part, the amount by which ~~[such]~~ the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused the deferral have been removed or rectified, the member shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

~~[(e) The]~~ (e)(1) Subject to the provisions of paragraph (2), the total of all assessments [upon] authorized by the association with respect to a member insurer for each account shall not in any one calendar year exceed two per cent of [such] the insurer's average premiums received in this State on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

(2) If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in this section shall be equal and limited to the higher of the three-year average annual premiums for the applicable account as calculated pursuant to this section.

(3) If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this part.

The board of directors may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(f) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses~~[-]~~ and claims.

(g) It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

(h) The association shall issue to each insurer paying an assessment under this part, other than a Class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

(i)(1) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by

a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

- (2) Within sixty days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest, unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.
- (3) Within thirty days after a final decision has been made, the association shall notify the protesting member insurer in writing of the final decision. Within sixty days of receipt of notice of the final decision, the protesting member insurer may appeal the final decision to the commissioner.
- (4) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision with or without a recommendation from the association.
- (5) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.

(j) The association may request information of member insurers to aid in the exercise of its powers under this section and member insurers shall promptly comply with any request."

SECTION 9. Section 431:16-210, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

- (1) Establish procedures for handling the assets of the association;
- (2) Establish the amount and method of reimbursing members of the board of directors under section 431:16-207(c);
- (3) Establish regular places and times for meetings including telephone conference calls of the board of directors;
- (4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
- (5) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;
- (6) Establish any additional procedures for assessments under section 431:16-209;
- (7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association[-];
- (8) Establish procedures to remove a director for cause, including the case in which a director is affiliated with a member insurer that becomes an impaired or insolvent insurer; and
- (9) Require the board of directors to establish a policy and procedure for addressing conflicts of interests.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under ~~[section 431:16-208(n)(3)]~~ sections 431:16-208(k)(3) and [section] 431:16-209, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. ~~[Such a]~~ The corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with

the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this part."

SECTION 10. Section 431:16-212, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) To aid in the detection and prevention of insurer insolvencies or impairments, it shall be the duty of the commissioner:

(1) To notify the commissioners of all the other states, territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:

(A) Revocation of license;

(B) Suspension of license; or

(C) Makes any formal order that ~~[such] the~~ company ~~[restricts]~~ re-
strict its premium writing, obtain additional contributions to surplus, withdraw from the State, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors.

~~[Such]~~ The notice shall be mailed to all commissioners within thirty days following the action taken or the date on which ~~[such] the~~ action occurs;

(2) To report to the board of directors when the commissioner has taken any of the actions set forth in paragraph (1) or has received a report from any other commissioner indicating that any such action has been taken in another state. ~~[Such]~~ The report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner;

(3) To report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that ~~[such] the~~ company may be an impaired or insolvent insurer; and

(4) To furnish to the board of directors the National Association of Insurance Commissioners Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. ~~[Such]~~ The report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority."

2. By amending subsection (c) to read:

"(c) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this State. ~~[Such]~~ The reports and recommendations shall not be considered public documents."

3. By amending subsection (e) to read:

"(e) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty days of the receipt of such request, the commissioner shall begin ~~[such] the~~ examina-

tion. The examination may be conducted as a National Association of Insurance Commissioners' examination or may be conducted by such persons as the commissioner designates. The cost of ~~[such]~~ the examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall ~~[such]~~ the examination report be released to the board of directors prior to its release to the public, but this shall not excuse the commissioner from complying with subsection (a). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public."

SECTION 11. Section 431:16-214, Hawaii Revised Statutes, is amended to read as follows:

"§431:16-214 Miscellaneous provisions. (a) Nothing in this part shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) ~~[All meetings and records of the board of directors shall be open to all member insurers except for those meetings and records pertaining to the solvency, liquidation, rehabilitation, or conservation of any member insurer deemed confidential. A member insurer shall provide written designation of its representative or representatives to the board meetings.~~

(c) ~~Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 431:16-208.] Records shall be kept of all meetings of the board of directors to discuss the activities of the association in carrying out its powers and duties under section 431:16-208. The records of the association with respect to an impaired or insolvent insurer shall not be disclosed prior to the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, except:~~

(1) Upon the termination of the impairment or insolvency of the insurer; or

(2) Upon the order of a court of competent jurisdiction.

Nothing in this subsection ~~[(b)]~~ shall limit the duty of the association to render a report of its activities under section 431:2-304(b).

~~[(d)]~~ (c) For the purpose of carrying out its obligations under this part, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section ~~[431:16-208(m).]~~ 431:16-208(j). Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this part. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d) As a creditor of the impaired or insolvent insurer as established in subsection (c) and consistent with section 431:15-324, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this part. If the liquidator has not, within one hundred twenty days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty

associations having obligations because of the insolvency, the association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

- (e)(1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.
- (2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under section 431:16-208 with respect to such insurer have been fully recovered by the association.
- (f)(1) If an order for liquidation or rehabilitation of an insurer domiciled in this State has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of [§]paragraphs (2) to (4)[§].
- (2) No such distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- (3) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions the person received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions the person would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.
- (4) The maximum amount recoverable under this [§]subsection[§] shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.
- (5) If any person liable under [§]paragraph (3)[§] is insolvent, all its affiliates that controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate."

SECTION 12. Section 431:16-217, Hawaii Revised Statutes, is amended to read as follows:

"§431:16-217 Stay of proceedings; reopening default judgments. All proceedings in which the insolvent insurer is a party in any court in this State shall be stayed [sixty] one-hundred eighty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default the association

may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.”

SECTION 13. Section 431:16-219, Hawaii Revised Statutes, is repealed.

SECTION 14. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2012; provided that sections 4 to 13 of this Act shall not apply to any proceedings in which a member insurer is placed under an order of liquidation prior to July 1, 2012.

(Approved July 6, 2012.)

Notes

1. Should be underscored.
2. Edited pursuant to HRS §23G-16.5.

ACT 251

S.B. NO. 2766

A Bill for an Act Relating to Entities Regulated By the Insurance Commissioner.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to part I of article 1, to be appropriately designated and to read as follows:

“§432:1- Fees. (a) The commissioner shall collect, in advance, the following fees:

- (1) Issuance of certificate of authority: \$150;
- (2) Organization of domestic mutual benefit societies:
 - (A) Filing of application and documents required for issuance of certificate of registration: \$150; and
 - (B) Issuance of certificate of registration: \$150; and
- (3) For renewal of the certificate of authority: \$150 per year.

(b) If the fee for the renewal of the certificate of authority is not paid before or on the renewal date, a penalty shall be imposed in the amount of fifty per cent of the fee. The commissioner shall provide notice in writing of the delinquency of renewal and the imposition of the authorized penalty. If the fee and the penalty are not paid within thirty days immediately following the date of the notice of delinquency, the commissioner may revoke the certificate of authority and may not reinstate the certificate of authority until the fee and penalty have been paid.

(c) All fees and penalties collected pursuant to this section and penalties collected pursuant to sections 432:1-105, 432:1-405, and 432:1-407 shall be deposited to the credit of the compliance resolution fund.”

SECTION 2. Section 432:1-102, Hawaii Revised Statutes, is amended to read as follows:

“§432:1-102 Applicability of other laws. (a) Part III of article 10A, and article 10H of chapter 431 shall apply to nonprofit medical indemnity or hospital service associations. Such associations shall be exempt from the provisions of part I of article 10A; provided that such exemption is in compliance with applicable federal statutes and regulations.

(b) Article 2, article 2D, ~~[part]~~ parts II and IV of article 3, article 6, part III of article 7, article 13, article 14G, and article 15 of chapter 431, sections 431:3-301, 431:3-302, 431:3-303, 431:3-304, and 431:3-305, and the powers granted by those provisions to the commissioner, shall apply to managed care plans, health maintenance organizations, or medical indemnity or hospital service associations that are owned or controlled by mutual benefit societies so long as the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations.

(c) The commissioner may adopt rules pursuant to chapter 91 for the implementation and administration of this chapter.”

SECTION 3. Section 432:1-202, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) After the organization of a society is completed and a certificate of ~~[compliance with law]~~ registration is granted by the commissioner, the society shall be governed by its administrative board or body in accordance with its constitution and bylaws.”

SECTION 4. Section 432:1-301, Hawaii Revised Statutes, is amended to read as follows:

“§432:1-301 Registration with commissioner: certificate of registration and ~~[authorization to solicit members.]~~ certificate of authority. (a) Before doing business or engaging in any act, any society as defined in section 432:1-104(2) shall file with the commissioner:

- (1) Copies of its constitution or organic instrument under which it purports to operate, and the bylaws, and rules and regulations, if any;
- (2) If a society promising or offering to pay death, sick, disability, or other benefits in an amount equal to or in excess of \$25:
 - (A) Copies of all proposed forms of benefit certificates, applications, and circulars to be issued by the society; and
 - (B) A bond in the sum of \$25,000 with sureties approved by the commissioner. The bond shall be conditioned upon the return of the advance payments referred to in section 432:1-304, if the organization is not completed within one year; and
- (3) Any additional information as the commissioner may require.

(b) ~~[Upon]~~ Except as provided in section 432:1-302, upon the filing of the information required by subsection (a), if it appears to the commissioner's satisfaction that the purposes of the society are lawful, ~~[the commissioner shall issue a certificate registering the society and licensing it to operate in the State.~~

~~(c) In the case of any society offering or promising to pay death, sick, disability, or other benefits in an amount equal to or in excess of \$25, if the commissioner is satisfied that the purposes of the society are] not for profit [but], and for the benefit of its members, the commissioner shall [authorize] issue a certificate of registration authorizing the society to solicit members as provided in section 432:1-303.~~

(c) Upon issuance of a certificate of registration pursuant to subsection (b), the society may apply for a certificate of authority. The applicant society shall provide to the commissioner:

- (1) Evidence of compliance with the special deposit requirements of section 432:1-304; and
- (2) A description of the procedures, approved by the society's administrative board or body in accordance with its constitution and bylaws, to be implemented to comply with the protection against insolvency requirements of section 432:1-407.

(d) The applicant society that satisfies the requirements of this chapter shall be issued a certificate of authority in accordance with part II of article 3 of chapter 431. Societies that are currently authorized to transact business in this State may continue to transact business until August 16, 2013. The authority of societies and all societies hereafter issued a certificate of authority, may thereafter be renewed annually, but in all cases shall terminate on the succeeding August 16.

The applicant society may appeal a denial of its application pursuant to chapter 91."

SECTION 5. Section 432:1-303, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Each society promising or offering to pay death, sick, disability, or other benefits in an amount equal to or in excess of \$25 may solicit members for the purpose of completing its organization upon receipt from the commissioner of the certificate ~~[and authority]~~ of registration required in section 432:1-301, and ~~[shall]~~ may collect from each applicant the amount of not ~~[less]~~ more than one regular monthly payment ~~[in accordance with its table of rates as provided by its constitution and bylaws,]~~ and shall issue to each applicant a receipt for the amount so collected."

2. By amending subsection (c) to read:

"(c) If the society does not offer or promise to pay any death benefits in excess of \$25 upon the death of a member, but merely offers or promises to pay disability benefits by reason of sickness or injury, or to pay any other benefits, with or without provision of death benefit in excess of \$25, the society shall ~~[before receiving a certificate of compliance with law from the commissioner, prove to the commissioner that at least one hundred members have each paid in, in cash, at least six regular monthly payments to the disability fund. Such payments in the aggregate shall:~~

- (1) ~~Amount to at least twenty times the maximum amount of disability or other benefits offered or promised to be paid to any one member during or within a period of thirty days;~~
- (2) ~~Be credited to the disability, sick or other benefit fund; and~~
- (3) ~~During the period of organization of the society, be held in trust to be returned to the applicants or members who have made payment of the same, if and in case the organization of the society is not completed within one year.] apply for a certificate of authority from the commissioner."~~

SECTION 6. Section 432:1-304, Hawaii Revised Statutes, is amended to read as follows:

"§432:1-304 Authority to offer death, sick, disability, or other benefits; special deposit and control of certain funds. Except as provided in this section and section 432:1-305, all regular payments received for account of death benefit, accident and health or sickness, or other ~~[benefit funds,]~~ benefits, during the period of organization of a society, shall not be used for the payment of any expenses of the society, but shall be placed on deposit or in trust in some bank or

trust company approved by the commissioner, payable to the society but under the joint control with the commissioner. In case the organization of the society is not completed within one year, the funds shall be returned to the applicants or members who made payments of the respective amounts. If, however, the organization is completed and the commissioner issues a certificate of ~~[compliance with the law,]~~ authority, the funds so deposited in trust, together with interest, if any, shall be released by the commissioner in favor of the society."

SECTION 7. Section 432:1-305, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) At no time shall the society, except as provided in subsection (c), use more than twenty-five per cent of the payments up to \$100,000 and seven per cent of the payments in excess of \$100,000, received from its members or applicants in the form of admission fees, dues, contributions, or assessments of any nature for expenses other than taxes, in connection with ~~[the management or operation of the death benefit, sick, disability, or other benefit funds.]~~ its management or operations."

SECTION 8. Section 432:1-405, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The commissioner may suspend or revoke the certificate of ~~[compliance]~~ authority of any mutual benefit society that fails to file any of the documents required in subsection (a). In lieu of or in addition to suspension or revocation of the certificate of ~~[compliance]~~ authority of any mutual benefit society, the commissioner may impose on the mutual benefit society a penalty in the amount of not less than \$100 and not more than \$500 for each day of delinquency."

SECTION 9. Section 432:1-407, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Net worth requirements are as follows:

- (1) Before issuing a certificate of authority pursuant to section 432:1-301, the commissioner shall require that the mutual benefit society has an initial net worth of \$2,000,000 and the society shall thereafter maintain the minimum net worth required under paragraph (2); and
- (2) ~~[Except as provided in paragraphs (3) and (4), every]~~ Every mutual benefit society shall maintain a minimum net worth equal to the greater of:
 - (A) \$2,000,000;
 - (B) Two per cent of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first \$150,000,000 of premium revenues and one per cent of annual premium revenues on the premium revenues in excess of \$150,000,000; or
 - (C) An amount equal to eight per cent of the sum of annual health care expenditures and operating expenses as reported on the most recent financial statement filed with the commissioner;
- (3) ~~The minimum net worth requirement set forth in paragraph (2)(A) shall be phased in as follows:~~
 - (A) ~~Seventy-five per cent of the required amount by January 1, 2001; and~~
 - (B) ~~One hundred per cent of the required amount by December 31, 2002; and~~

- (4) ~~The minimum net worth requirement set forth in [paragraph] (2)(C) shall be phased in as follows:~~
- ~~(A) Fifty per cent of the required amount by December 31, 1997;~~
 - ~~(B) Seventy-five per cent of the required amount by December 31, 1998; and~~
 - ~~(C) One hundred per cent of the required amount by December 31, 1999].”~~

SECTION 10. Section 432:2-602, Hawaii Revised Statutes, is amended to read as follows:

“§432:2-602 Reports. ~~[Reports shall be filed in accordance with the provisions of this section.]~~ (a) Every society transacting business in this State shall annually, on or before March 1, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a fee of \$7.50 for filing same. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(b) As part of the annual statement ~~[herein]~~ required, each society shall, on or before March 1, file with the commissioner a valuation of its certificates in force on December 31 last preceding, provided the commissioner may, in the commissioner’s discretion for cause shown, extend the time for filing ~~[such]~~ the valuation for not more than two calendar months. ~~[Such]~~ The valuation shall be done in accordance with the standards specified in section 432:2-601. ~~[Such]~~ The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(c) A society neglecting to file the annual statement in the form and within the time provided by this section shall be liable for a penalty of \$100 for each day during which ~~[such]~~ the neglect continues, and, upon notice by the commissioner to that effect, its authority to do business in this State shall cease while ~~[such]~~ the default continues.

(d) All fees and penalties collected pursuant to this section and section 432:2-603 and penalties collected pursuant to section 432:2-703 shall be deposited to the credit of the compliance resolution fund.”

SECTION 11. Section 432:2-603, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Societies ~~[which]~~ that are now authorized to transact business in this State may continue ~~[such]~~ to transact business until May 1 next succeeding July 1, 1988. The authority of ~~[such]~~ societies and all societies hereafter licensed, may thereafter be renewed annually, but in all cases to terminate on the succeeding May 1. However, a license so issued shall continue in full force and effect until the new license is issued or specifically refused. For each ~~[such]~~ license or renewal~~[-]~~ subject to this section, the society shall pay the commissioner \$7.50. A duly certified copy or duplicate of ~~[such]~~ the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this article.”

SECTION 12. Section 432D-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may examine the affairs of any health maintenance organization or of any providers with whom such organization has con-

tracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this State but shall make such examination not fewer than once every ~~[three]~~ five years[-] for health maintenance organizations domiciled in this State."

SECTION 13. Section 432D-17, Hawaii Revised Statutes, is amended to read as follows:

"§432D-17 Fees. (a) The commissioner shall collect in advance the following fees:

- (1) For filing an application for a certificate of authority or amendment thereto, \$600; and
- (2) For ~~[all services subsequent to the issuance of a]~~ renewal of the certificate of authority [(including extension of the certificate of authority)], \$400[-] per year.

(b) The commissioner shall ~~[notify the]~~ provide each holder of ~~[the]~~ a certificate of authority ~~[by]~~ at least thirty days' advance written notice ~~[at least thirty days prior to the]~~ of the applicable extension date [of the certificate]. If the fee for the extension of the certificate of authority is not paid before or on the extension date, a penalty shall be imposed in the amount of fifty per cent of the fee. If the fee and the penalty are not paid within thirty days immediately following the extension date, the commissioner may revoke the certificate of authority and shall not reinstate the certificate of authority until the fee and penalty have been paid.

(c) All fees and penalties collected pursuant to this section and penalties collected pursuant to section 432D-14 shall be ~~[remitted by the commissioner to the director of finance and shall be placed to the credit of the general fund.]~~ deposited to the credit of the compliance resolution fund."

SECTION 14. Section 432D-19, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Article 2, article 2D, part IV of article 3, article 6, part III of article 7, article 13, article 14G, and article 15 of chapter 431, and sections 431:3-301 and 431:3-302, and the powers granted by those provisions to the commissioner shall apply to health maintenance organizations, so long as the application in any particular case is in compliance with and is not preempted by applicable federal statutes and regulations."

SECTION 15. Section 432:1-307, Hawaii Revised Statutes, is repealed.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 17. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 252

S.B. NO. 2763

A Bill for an Act Relating to Mortgage Loan Origination.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 454F, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§454F- Mortgage servicer companies; mortgage loan originators. An employee who performs mortgage loan originator activities for a mortgage servicer company is exempt from registration and licensure as a mortgage loan originator; provided that:

- (1) The employee's actions are part of the employee's duties as an employee of the mortgage servicer company; and
- (2) The employee only provides mortgage loan originator services with respect to a residential mortgage loan modification.

§454F- Nonprofit organizations; mortgage loan originators. (a) An employee who performs mortgage loan originator activities for a nonprofit organization is exempt from registration and licensure as a mortgage loan originator; provided that:

- (1) The employee's actions are part of the employee's duties as an employee of the nonprofit organization;
 - (2) The employee only provides mortgage loan originator services with respect to residential mortgage loans with terms favorable to the borrower; and
 - (3) The nonprofit organization registers with the Nationwide Mortgage Licensing System and Registry.
- (b) The commissioner shall periodically examine the books and activities of nonprofit organizations as defined in section 454F-1 and shall revoke an organization's registration as a nonprofit organization with the Nationwide Mortgage Licensing System and Registry if the nonprofit organization fails to meet the requirements to be a nonprofit organization.

(c) In determining whether a residential mortgage loan has terms favorable to the borrower, the commissioner shall examine:

- (1) The interest rate that the home loan would carry;
- (2) The charges that are imposed on the borrower for origination, application, closing, and other costs;
- (3) Whether the mortgage includes any predatory characteristics;
- (4) The borrower's ability to repay the loan; and
- (5) The term of the mortgage.

§454F- Sole proprietorships; fees. Every mortgage loan originator company that consists of a single individual not exempt under section 454F-2 who engages in the business of a mortgage loan originator as a sole proprietorship shall be reimbursed by the division for the fees paid for the state mortgage loan originator's initial application and annual license renewal fees.”

SECTION 2. Section 454F-1, Hawaii Revised Statutes, is amended as follows:

1. By adding four new definitions to be appropriately inserted and to read:

““Housing finance agency” means any authority, including any nonprofit organization:

- (1) That helps meet the affordable housing needs of the residents of the State;
- (2) That is supervised directly or indirectly by the State;
- (3) That is subject to audit and review by the State; and
- (4) Whose activities make it eligible to be a member of the National Council of State Housing Agencies.

“Mortgage servicer company” means a mortgage servicer company licensed under chapter 454M.

“Nonprofit organization” means an organization that:

- (1) Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- (2) Promotes affordable housing or provides homeownership education or similar services;
- (3) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;
- (4) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;
- (5) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients; and
- (6) Provides, or identifies for the borrower, residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

“Residential mortgage loan modification” means:

- (1) Modification of existing residential mortgage loans which generally includes a change in interest, principal, or term of loan; or
- (2) The processing of the approval of loan assumptions.

“Residential mortgage loan modification” does not include origination of mortgage loans.”

2. By amending the definitions of “Nationwide Mortgage Licensing System” and “sponsor” to read:

““Nationwide Mortgage Licensing System” or “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage loan originator companies, exempt registered mortgage loan originators, and exempt registered mortgage loan originator companies as defined by this chapter.

“Sponsor” means to [create];

- (1) Create a relationship through the Nationwide Mortgage Licensing System [for the purpose of appropriately supervising a mortgage loan originator’s activities]; and
- (2) Appropriately supervise a mortgage loan originator’s activities.”

SECTION 3. Section 454F-1.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All mortgage loan originators, mortgage loan originator companies, exempt sponsoring mortgage loan originator companies, nonprofit organizations, mortgage servicer companies, and [any] every other person in this State that originates a residential mortgage loan, unless exempt under section 454F-2, shall register with the Nationwide Mortgage Licensing System.”

SECTION 4. Section 454F-1.6, Hawaii Revised Statutes, is amended to read as follows:

“[H]§454F-1.6[H] Presumption of control. An individual is presumed to control a mortgage loan originator company if that individual is a director, general partner, managing ~~[director,]~~ member, or executive officer of that mortgage loan originator company.”

SECTION 5. Section 454F-1.7, Hawaii Revised Statutes, is amended to read as follows:

“[H]§454F-1.7[H] Duties of qualified individual and branch manager. (a) A qualified individual shall have the duty to manage and supervise the mortgage loan origination activities of a licensed mortgage loan originator company’s principal office and the licensed mortgage loan originators located at or working out of ~~[that location.] the principal office and all company branch offices.~~ A qualified individual shall hold a license as a mortgage loan originator issued pursuant to this chapter.

(b) A branch manager shall have the duty to directly manage and supervise a licensed mortgage loan originator company’s branch office and the licensed mortgage loan originators located at or working out of that location. A branch manager shall be physically present in the branch office and shall hold a license as a mortgage loan originator issued pursuant to this chapter.

(c) A qualified individual for a mortgage loan originator company ~~[and a branch manager for a branch office]~~ shall be responsible for:

- (1) Supervising the maintenance and accounting of client trust accounts and disbursements from those accounts;
- (2) Supervising the maintenance of all records, contracts, and documents of the mortgage loan originator company;
- (3) Supervising all mortgage loan originator agreements and mortgage loan documents and the handling of these documents by the licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company;
- (4) Supervising all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company;
- (5) Developing and enforcing policies and procedures relating to the handling of residential mortgage loan transactions and the professional conduct of the licensed mortgage loan originators and other staff;
- (6) Developing and monitoring compliance with a policy on continuing education requirements for all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company pursuant to the requirements of this chapter and the rules of the commissioner;
- (7) Ensuring that the licenses of all mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company, and the license of the mortgage loan originator company are current and active, and that all required fees are timely paid to the mortgage loan recovery fund;
- (8) Establishing and conducting a training program for all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company;

- (9) Ensuring that all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company are provided adequate information and training on the latest amendments to licensing laws and rules and any other applicable laws and rules;
- (10) Notifying the commissioner of the termination of the employment or independent contractor relationship of licensed mortgage loan originators who were employed by or were independent contractors of the mortgage loan originator company upon the termination of employment or the independent contractor relationship; and
- (11) Ensuring that the records, loan documents, and agreements including mortgage loan originator agreements are retained for seven years on paper or in electronic format by the mortgage loan originator company.

(d) A branch manager for a branch office shall be responsible for supervising:

- (1) The maintenance of all records, contracts, and documents of the mortgage loan originator company branch office;
- (2) All mortgage loan originator agreements and mortgage loan documents and the handling of these documents by the licensed mortgage loan originators or independent contractors located at or working out of the mortgage loan originator company branch office; and
- (3) All licensed mortgage loan originators who are employed by, or are independent contractors of, the mortgage loan originator company and who are located at or working out of the mortgage loan originator company branch office."

SECTION 6. Section 454F-1.8, Hawaii Revised Statutes, is amended to read as follows:

"[H]§454F-1.8]] Sponsorship by mortgage loan ~~[origination]~~ originator company ~~[or]~~, exempt sponsoring mortgage loan originator company~~[-]~~, or non-profit organization. All mortgage loan originators shall be sponsored by a mortgage loan originator company ~~[or by]~~, an exempt sponsoring mortgage loan originator company~~[-]~~, or a nonprofit organization. At no time shall a mortgage loan originator be sponsored by more than one Hawaii licensed mortgage loan originator company, exempt sponsoring mortgage loan originator company, or nonprofit organization."

SECTION 7. Section 454F-2, Hawaii Revised Statutes, is amended to read as follows:

"§454F-2 Exemptions. This chapter shall not apply to the following:

- (1) An exempt registered mortgage loan originator~~[-]~~ when acting for an insured depository institution~~[-]~~, ~~a subsidiary of an insured depository institution regulated by a federal banking agency,~~ or an institution regulated by the Farm Credit Administration;
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with, or on behalf of, an immediate family member of the individual;
- (3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;

- (4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a lender, a mortgage loan originator company, or other mortgage loan originator or by an agent of a lender, mortgage loan originator company, or other mortgage loan originator;
- (5) A person or entity that only performs real estate brokerage activities and is licensed or registered by the State unless the person or entity is compensated by a lender, a mortgage loan originator company, or other mortgage loan originator or by an agent of the lender, mortgage loan originator company, or other mortgage loan originator;
- (6) A person or entity solely involved in extensions of credit relating to timeshare plans, as the term is defined in title II United States Code section 101(53D) [~~of Title 11, United States Code~~];
- (7) An exempt sponsoring mortgage loan originator company as defined by this chapter except as otherwise provided by this chapter; [~~or~~]
- (8) An insured depository institution[~~;~~];
- (9) An institution regulated by the Farm Credit Administration; or
- (10) Employees of government agencies or of housing finance agencies who act as mortgage loan originators."

SECTION 8. Section 454F-4.9, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) An application for licensure pursuant to this chapter shall be considered abandoned if an applicant fails to provide evidence of continued efforts to complete the licensing application process for [~~six consecutive months;~~] thirty days. The thirty-day period shall begin on the last day of contact with the division by the applicant. The commissioner may extend this period for good cause. No refund of filing fees shall be provided to an applicant for an abandoned application. The commissioner shall not be required to act on any abandoned application and is not required to retain abandoned applications or supporting documents. The commissioner may withdraw abandoned applications from the Nationwide Mortgage Licensing System.

(b) For purposes of this section, failure to provide evidence of continued efforts to complete the licensing process includes:

- (1) Failure to submit required documents and other information requested by the commissioner within [~~six months~~] thirty days from the last date the documents or other information were requested; or
- (2) Failure to provide the commissioner with any written communication indicating that the applicant is attempting to complete the licensing process for a period of [~~six months;~~] thirty days."

SECTION 9. Section 454F-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The minimum standards for license renewal for mortgage loan originator companies shall include the following:

- (1) The mortgage loan originator company continues to meet the minimum standards for licensure established pursuant to section 454F-5;
- (2) The mortgage loan originator company's [~~branch manager and~~] qualified individual and every branch manager have satisfied the minimum standards for license renewal; and

- (3) The mortgage loan originator company has paid all required fees for renewal of the license.”

SECTION 10. Section 454F-22, Hawaii Revised Statutes, is amended to read as follows:

“§454F-22 Mortgage loan originator, mortgage loan originator company, and exempt sponsoring mortgage loan originator company fees. (a) A mortgage loan originator shall pay the following fees to obtain and maintain a valid mortgage loan originator license:

- (1) Initial application fee of \$500;
- (2) Annual license renewal fee of \$300;
- (3) Reinstatement fee of \$100;
- (4) Late fee of \$25 per day; and
- (5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91.

(b) A mortgage loan originator company shall pay the following fees to maintain a valid mortgage loan originator company license or branch license:

- (1) Fees payable for a principal office of a mortgage loan originator company:
 - (A) Initial application fee of \$900;
 - (B) Annual license renewal fee of \$600;
 - (C) Reinstatement fee of \$100;
 - (D) Late fee of \$25 per day; and
 - (E) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91, for each control person, executive officer, director, general partner, and manager; and

- (2) Fees payable for each branch office of a mortgage loan originator company:
 - (A) Initial application fee of \$250;
 - (B) Annual license renewal fee of \$100;
 - (C) Reinstatement fee of \$100; and
 - (D) Late fee of \$25 per day.

(c) An exempt sponsoring mortgage loan originator company shall pay the following ~~[fess]~~ fees to maintain a valid registration in the Nationwide Mortgage Licensing System~~[-]~~ and Registry:

- (1) Initial registration fee of \$200;
- (2) Annual registration renewal fee of \$150; and
- (3) Late fee of \$25 per day.

(d) A nonprofit organization shall pay the following fees to maintain a valid registration as a nonprofit organization in the Nationwide Mortgage Licensing System and Registry:

- (1) Initial registration fee of \$200;
- (2) Annual registration renewal fee of \$150; and
- (3) Late fee of \$25 per day.

~~[(d)]~~ (e) In addition to fees charged by the Nationwide Mortgage Licensing System, a licensee shall pay to the commissioner a fee of \$50 for each of the following amendments to information provided to the Nationwide Mortgage Licensing System that require the review of the commissioner:

- (1) Change of physical location~~[-, including address change]~~ or mailing address for branch office or principal place of business;
- (2) Addition or deletion of a “d/b/a” assignment;
- (3) Change of mortgage loan originator’s sponsor;

- (4) Change of qualified individual;
~~[(3)]~~ (5) Change of branch manager; [or] and
~~[(4)]~~ (6) Change of mortgage loan originator company's legal name.

The commissioner, upon a showing of good cause, may waive any fee set forth in this subsection.

~~[(e)]~~ (f) The fees established by this section are nonrefundable and are in addition to any fees established and charged by the Nationwide Mortgage Licensing System, an approved educational course provider, an approved educational testing provider, a law enforcement agency for fingerprints and background checks, or a credit reporting agency used by the Nationwide Mortgage Licensing System.

~~[(f)]~~ (g) The commissioner may establish, by rule pursuant to chapter 91, any other fees or charges necessary for the administration of this chapter."

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 12. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 253

S.B. NO. 2765

A Bill for an Act Relating to Captive Insurance Companies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part I of article 19 to be appropriately designated and to read as follows:

"§431:19-115.7 Applicability of other laws to captive insurance companies writing direct workers' compensation insurance policies. Captive insurance companies writing direct workers' compensation insurance policies pursuant to chapter 386 may be subject to article 15 if the captive insurance company is deemed insolvent."

SECTION 2. Section 431:19-101, Hawaii Revised Statutes, is amended as follows:

1. By adding nine new definitions to be appropriately inserted and to read:

"Administrator" means the captive insurance administrator established in section 431:19-101.5.

"Class 1 company" means a pure captive insurance company that is designated and licensed in this State to write business only as a reinsurer.

"Class 2 company" means a pure captive insurance company that is designated and licensed in this State to write business as a direct insurer or as a direct insurer and reinsurer.

"Class 3 company" means an association captive insurance company or risk retention captive insurance company that is designated and licensed in this State.

"Class 4 company" means a sponsored captive insurance company that is designated and licensed in this State.

"Class 5 company" means a reinsurance or excess insurance company that is a captive insurance company designated and licensed in this State pursuant to section 431:19-111.5.

"Controlled unaffiliated business" means, in the case of a pure captive insurance company, any person:

- (1) That is not in the corporate system of a parent and its affiliated entities;
- (2) That has an existing contractual relationship with a parent or one of its affiliated entities; and
- (3) Whose risks are managed by the pure captive insurance company.

"Governing body" means the board of directors, subscriber's advisory committee, membership, or other entity responsible for the governance of a captive insurance company.

"Organizational document" means a captive insurance company's articles of association, articles of incorporation, articles of organization, subscribers' agreement, bylaws, operating agreement, or any other document that establishes the captive insurance company as a legal entity or prescribes its existence."

2. By amending the definitions of "affiliated entity", "association", "association captive insurance company", "captive insurance company", "outside captive insurance company", "participant", "protected cell", "pure captive insurance company", "risk retention captive insurance company", and "sponsored captive insurance company" to read:

"Affiliated entity" means any company, person, or other entity in the same corporate system as a parent or a member organization by virtue of common ownership, control, operation, or management[~~or, in the case of a pure captive insurance company, whose risks insured by the pure captive insurance company are directly or indirectly controlled by the parent or an affiliate of the parent of a pure captive insurance company~~].

"Association" means [any legal association of] two or more members who are engaged in business or activities similar or related to the liability to which these members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations; provided that the members of the association shall be individuals, corporations, limited liability companies, partnerships, associations, or other entities, except labor organizations, the member organizations of which or which does itself, whether or not in conjunction with some or all of the member organizations:

- (1) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;
- (2) Have complete voting control over an association captive insurance company incorporated as a mutual insurer; [or]
- (3) Constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer[-]; or
- (4) Have complete voting control over an association captive insurance company formed as a limited liability company.

"Association captive insurance company" means [any] a captive insurance company that insures risks of the member organizations of the association, and [their] that may insure the risks of affiliated [companies] entities of the member organizations and the risks of the association itself.

"Captive insurance company" means a class 1[~~5~~] company, class 2[~~5~~] company, class 3[~~5~~] company, class 4[~~5~~] company, or class 5 [~~captive insurance~~] company formed or authorized under this article.

"Outside captive insurance company" means an insurance company licensed under the laws of a jurisdiction other than this State and not otherwise admitted to do business as an insurance company in this State, that insures the risks of its parent or any affiliated [~~companies~~] entities.

"Participant" means an entity that meets the requirements of section 431:19-305, and any [~~affiliates~~] affiliated entities thereof that are insured by a sponsored captive insurance company where the losses of the participant may be limited through a participant contract to the participant's pro rata share of the assets of one or more protected cells identified in the participant contract.

"Protected cell" means a separate account established by a sponsored captive insurance company formed or licensed under this [~~part~~] article in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of the participants as set forth in the participant contracts.

"Pure captive insurance company" means [~~any~~] a captive insurance company that only insures or reinsures risks of its parent and affiliated entities [~~-~~] or of a controlled unaffiliated business.

"Risk retention captive insurance company" means a captive insurance company [~~which~~] that is formed as a "risk retention group" as defined in chapter 431K.

"Sponsored captive insurance company" means [~~any~~] a captive insurance company [~~in~~]:

- (1) In which the minimum required capital and surplus is provided by one or more sponsors [~~and~~];
- (2) That is formed or licensed under this article[~~-A sponsored captive insurance company~~];
- (3) That insures the risks only of its participants through separate participant contracts; and [~~may fund~~]
- (4) That may fund its liability to each participant through one or more protected cells. A sponsored captive insurance company segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account."

SECTION 3. Section 431:19-101.2, Hawaii Revised Statutes, is amended to read as follows:

"§431:19-101.2 Confidential treatment. (a) Except as otherwise provided in [~~subsection (b);~~] this section, all nonpublic information in a captive insurance company's application for licensure, its business plan, or of its parent or the parent's member organizations, and all other nonpublic information disclosed to the commissioner pursuant to this article, shall be given confidential treatment and shall not be made public by the commissioner.

(b) If the commissioner determines that the interest of the policyholders, shareholders, or the public will be served by making the information public, then after giving the captive insurance company and its parent or the parent's member organizations that would be affected thereby, three days written notice of intent, and unless otherwise contrary to law, the commissioner may make public all or any part of the nonpublic information in a manner that the commissioner deems appropriate; provided that the commissioner may disclose nonpublic information to courts of competent jurisdiction, and insurance departments or regulatory agencies of other competent jurisdictions without prior notification to the person to whom the information pertains.

(c) This section shall not apply to risk retention captive insurance companies. The confidentiality provisions of section 431:2-209 shall apply to risk retention captive insurance companies.

~~[(e)]~~ (d) For purposes of this section:

“Equity securities” means:

- (1) A share in a corporation, whether or not transferable or denominated a “stock”, or similar security evidencing an ownership interest in the person;
- (2) The interest of a limited partner in a limited partnership;
- (3) The interest of a partner in a partnership, including a joint venture; or
- (4) A warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in paragraph (1), (2), or (3).

“Nonpublic information” means information that, prior to disclosure to the commissioner pursuant to this article is, or was:

- (1) Not a public record as defined in rule 1001(5) of section 626-1; or
- (2) Not a government record that must be disclosed under section 92F-12; provided that in the case of a person whose equity securities are collectively owned and held by thirty-six or more persons, “nonpublic information” does not include financial information disclosed to owners and holders of equity securities.”

SECTION 4. Section 431:19-101.5, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-101.5 Captive insurance administrator. ~~[(a)]~~ There shall be established within the ~~[office of the commissioner,]~~ insurance division a captive insurance administrator, who shall be solely responsible for assisting the commissioner in ~~[the]~~ monitoring, ~~[regulation, and development of]~~ regulating, and developing captive insurance companies under this article. The commissioner, with the approval of the director of commerce and consumer affairs, shall appoint the administrator who shall be designated as a deputy commissioner and shall be exempt from chapter 76, notwithstanding section 431:2-105(b)~~[-]~~ to the contrary. The administrator shall serve at the pleasure of the director of commerce and consumer affairs and shall report directly to the commissioner.

~~[(b) “Administrator”, where used in this article, means the captive insurance administrator.]”~~

SECTION 5. Section 431:19-101.8, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The commissioner may establish a separate fund designated as the captive insurance administrative fund to be expended by the commissioner to carry out the commissioner’s duties and obligations under this article ~~[19 of chapter 431].~~”

2. By amending subsection (d) to read:

“(d) Sums from the fund expended by the commissioner shall be used to defray any administrative costs, including personnel costs~~[-]~~ associated with the captive programs of the insurance division, and costs incurred by supporting offices, branches, divisions, and departments. ~~[Any]~~ Notwithstanding any law to the contrary ~~[notwithstanding]~~, the commissioner may use the moneys in the fund to employ or retain, by contract or otherwise~~[-]~~ and without regard to chapter 76, hearings officers, attorneys, investigators, accountants, examiners,

and other necessary professional, technical, and support personnel to implement and carry out the purposes of this article [19 of chapter 431]; provided that any position, except any attorney position, that is subject to chapter 76 prior to July 1, 1999, shall remain subject to chapter 76.”

SECTION 6. Section 431:19-102, Hawaii Revised Statutes, is amended by amending subsections (a) through (f) to read as follows:

“(a) ~~[Any captive insurance company, when]~~ When permitted by ~~[its articles of association, articles of incorporation, articles of organization, or other]~~ an applicant captive insurance company’s organizational [document,] documents, the applicant captive insurance company may apply to the commissioner for a certificate of authority to do any and all insurance set forth in subsection (h); provided that:

- (1) No pure captive insurance company may insure or reinsure any risks other than those of its parent ~~[and]~~, affiliated entities~~;~~, and controlled unaffiliated businesses, which shall be approved on a case by case basis;
- (2) No association captive insurance company may insure any risks other than those of ~~[the member organizations of its association and their affiliated entities;]~~ its association, those of the member organizations of its association, and those of a member organization’s affiliated entities;
- (3) ~~[No]~~ Unless otherwise allowed under section 431:19-102.2, no captive insurance company may provide personal motor vehicle or homeowner’s insurance coverage or any component thereof, other than as ~~[employee];~~
 - (A) Employee benefits for the employees of a parent, association, or its members, and their respective affiliated entities; or ~~[as reinsurance]~~
 - (B) Reinsurance as may be allowed under this article; and
- (4) No captive insurance company may accept or cede insurance except as provided in section 431:19-111.

(b) No captive insurance company shall do any insurance business in this State unless:

- (1) It first obtains from the commissioner a certificate of authority authorizing it to do insurance business in this State;
- (2) Its ~~[board of directors, subscribers’ advisory committee, or other]~~ governing body holds at least one meeting each year in this State;
- (3) It maintains its principal place of business and registered office in this State, except that a branch captive insurance company need only maintain the principal place of a business unit in this State; and
- (4) It designates a registered resident agent in accordance with chapter 414, 414D, or 428, as applicable, to accept service of process and to otherwise act on its behalf in this State. Whenever the registered resident agent cannot, with reasonable diligence, be found at the registered office of the captive insurance company, the commissioner shall be an agent of the captive insurance company upon whom any process, notice, or demand may be served in accordance with section 431:2-206.

(c) Before ~~[receiving]~~ an applicant captive insurance company receives a certificate of authority, ~~[a captive insurance company]~~ the applicant captive insurance company shall file with the commissioner:

- (1) A certified copy of its organizational documents~~[-including but not limited to its articles of incorporation, articles of association, by-~~

~~laws, subscribers' agreement, articles of organization, and operating agreement, as applicable];~~

(2) A statement under oath of:

(A) Any two of its principal officers;

(B) Its attorney-in-fact in the case of a captive insurance company formed as a reciprocal insurer; or

(C) The duly authorized representative of its governing body, showing its financial condition; and

(3) Any other statements or documents required by the commissioner.

(d) In addition to the information required by subsection (c), each applicant captive insurance company shall file with the commissioner evidence of the following:

(1) The amount and liquidity of its assets relative to the risks to be assumed;

(2) The adequacy of the expertise, experience, and character of the person or persons who will manage it;

(3) The overall soundness of its plan of operation[;], including the net retained risk on any one subject of insurance;

(4) The adequacy of the loss prevention programs of its parent or member organizations as applicable; and

(5) Any other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(e) ~~Each [captive insurance company applying for a certificate of authority under this article] applicant captive insurance company shall pay to the commissioner a nonrefundable application fee for examining, investigating, and processing its application for the certificate of authority. [In addition, each captive insurance company receiving a] Upon approval of the application for the certificate of authority, the applicant captive insurance company shall pay to the commissioner a license fee for the certificate of authority [from the commissioner shall pay an annual fee therefor for the year of registration and for each annual renewal thereafter]. Thereafter, the captive insurance company shall pay to the commissioner an annual renewal fee.~~ The amount of the nonrefundable application fee [and the annual certificate of authority fee], license fee, and renewal fee shall be set forth in rules adopted by the commissioner. In addition, the commissioner may adopt rules with respect to fees for the issuance of other documents as may be deemed necessary or requested by captive insurance companies.

(f) The commissioner may use independent advisors and consultants to assist in the review and analysis of a specific application or business plan amendment. The independent advisory and consulting fee, to be paid by the [captive] applicant[;], captive insurance company, shall be a reasonable fee authorized by the commissioner pursuant to section 431:19-114."

SECTION 7. Section 431:19-102.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) ~~[Notwithstanding the provisions of section 431:19-102(a), a]~~ A captive insurance company may be licensed to provide personal lines coverage for unrelated risks if the commissioner deems that extraordinary circumstances exist ~~[which make the provision of this]~~ whereby coverage ~~[by a captive insurance company]~~ would be appropriate and in the best interest of the public. In determining whether ~~[such]~~ extraordinary circumstances exist, the commissioner shall consider the following factors:

- (1) The extent to which the particular coverage is available in the voluntary market;
- (2) The existence of a relationship between the parent of the captive insurance company and the proposed policyholders other than that of insurer to insured;
- (3) Whether the captive insurance company has sufficient capitalization to insure the proposed risks; and
- (4) Any other factors ~~[which]~~ that the commissioner deems appropriate."

SECTION 8. Section 431:19-102.3, Hawaii Revised Statutes, is amended to read as follows:

"§431:19-102.3 Redomestication; approval as a domestic captive insurer.

(a) Any foreign or alien captive insurance company may become a domestic captive insurance company by meeting the following requirements:

- (1) ~~[Compliance]~~ Complying with all of the requirements relating to the organization and licensing of a domestic captive insurance company of the same type, and any requirements that the commissioner may adopt by rule;
- (2) ~~[The articles of incorporation or other]~~ Amending and restating its organizational [document shall be amended] documents in compliance with the laws of this State [and restated in its entirety before submission to the commissioner. Before the amended and restated articles of incorporation or other organizational document is transmitted to the department of commerce and consumer affairs, the foreign or alien captive insurance company shall petition], and submitting the amended and restated organizational documents for the commissioner's review; and
- (3) Petitioning the commissioner to issue a certificate [setting] of general good, which sets forth the commissioner's finding that the redomestication and maintenance of the company will promote the general good of the State. In arriving at the finding, the commissioner shall consider the factors set forth in section 431:19-106(b)[;].

~~[(3) —The]~~ (b) Upon issuance of the certificate of general good by the commissioner pursuant to subsection (a)(3), the foreign or alien captive insurance company shall file the following [shall be transmitted to] with the department of commerce and consumer affairs [for filing]:

- ~~[(A)]~~ (1) Articles of redomestication[;], which shall include:
 - (A) Name of the company;
 - (B) Date and location of incorporation or organization;
 - (C) Street address of the principal office in this State;
 - (D) Names and titles of the:
 - (i) Officers and directors of the company; or
 - (ii) Members of the governing body;
 - (E) A statement that the company is moving its domicile to this State;
 - (F) A statement that redomestication will occur upon filing the articles of redomestication and that the company shall be subject to the laws of this State; and
 - (G) A statement that copies of the articles of incorporation or other organizational document and any amendments certified by the proper officer of the jurisdiction under the laws of which the company is incorporated or organized are attached; pro-

vided that if any of these documents are in a foreign language, a translation under oath of the translator shall accompany these documents;

- ~~[(B)]~~ (2) Certificate of general good issued ~~[by the commissioner;]~~ pursuant to subsection (a)(3);
- ~~[(C)]~~ (3) Certificate of good standing or comparable documentation ~~[duly authenticated]~~ certified by the proper officer of the ~~[state or country]~~ jurisdiction under ~~[the laws of]~~ which the foreign or alien captive insurance company is ~~[incorporated;]~~ incorporated or organized; provided that:
 - ~~[(i)]~~ (A) The certificate or documentation shall be dated not earlier than thirty days prior to the ~~[filing of the articles of redomestication;]~~ date of the certificate of general good; and
 - ~~[(ii)]~~ (B) If the certificate of good standing or documentation is in a foreign language, a translation under oath of the translator shall accompany the certificate or documentation;
 - ~~[(D)]~~ Amendments to the articles of incorporation or other organizational document in compliance with the laws of this State;
 - (E) Restatement of the articles of incorporation or other organizational document in its entirety; and
 - (F) Organization fee; and
- (4) ~~The articles of redomestication shall set forth the following:~~
 - (A) Name of the company;
 - (B) Date and location of incorporation or organization;
 - (C) Street address of the principal office in this State;
 - (D) Names and titles of the:
 - (i) Officers and directors of the company; or
 - (ii) Members of the governing body;
 - (E) A statement that the company is moving its domicile from its present state or country to this State;
 - (F) A statement that redomestication will occur upon filing the articles of redomestication and that the company shall be subject to the laws of this State; and
 - (G) A statement that copies of the articles of incorporation or other organizational document and any amendments certified by the proper officer of the state or country under the laws of which the company is incorporated or organized are attached; provided that if any of these documents are in a foreign language, a translation under oath of the translator shall accompany these documents.]
- (4) The company's organizational documents, which shall be amended and restated in compliance with the laws of this State; and
- (5) Nonrefundable application fee.

~~[(b)]~~ The (c) Upon payment of the license fee and annual renewal fees, the domestic captive insurance company shall be entitled to the necessary or appropriate certificates and licenses to do business in this State and shall be subject to the authority and jurisdiction of this State. No captive insurance company redomesticating into this State need merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section.

~~[(e)]~~ (d) Upon redomestication in accordance with this section, the foreign or alien captive insurance company shall become a domestic captive insurance company organized under the laws of this State and shall have all the rights, privileges, immunities, and powers and be subject to all applicable laws, duties, and liabilities of a domestic captive insurance company of the same type. The

domestic captive insurance company shall possess all rights that it had prior to the redomestication to the extent permitted by the laws of this State and shall be responsible and liable for all the liabilities and obligations that it was subject to prior to the redomestication. All outstanding policies of the captive insurance company shall remain in full force and effect.”

SECTION 9. Section 431:19-102.4, Hawaii Revised Statutes, is amended by amending subsections (b) through (d) to read as follows:

“(b) Before transferring its domicile to any other jurisdiction and before the notice of change in domicile is transmitted to the department of commerce and consumer affairs, the domestic captive insurance company shall ~~[deliver to the commissioner a notice of intent to transfer, along with payment of]~~ submit a written request to the commissioner to redomesticate to another jurisdiction and a transfer fee of \$300~~], and petition the commissioner to issue a certificate of transfer].~~

(c) ~~[The notice of change in domicile, the certificate of transfer issued by the commissioner, the proof of redomestication,]~~ Upon approval of the written request to redomesticate pursuant to subsection (b), the commissioner shall issue a certificate of transfer. The domestic captive insurance company shall submit the certificate of transfer, a notice of change of domicile, and the filing fee [shall be transmitted] to the department of commerce and consumer affairs. The notice of change in domicile shall set forth the following:

- (1) Name of the company;
- (2) Dates that notice of the company’s intent to transfer domicile from this State was published pursuant to the publication requirements of section 1-28.5;
- (3) Date of the transfer of its domicile; and
- (4) ~~[State or country]~~ Jurisdiction to which its domicile will be transferred.

(d) ~~[Upon any transfer authorized pursuant to this section, the captive insurance company shall cease to be domiciled in this State, and its corporate or other legal existence in this State shall cease upon the issuance of a certificate of discontinuance by the department of commerce and consumer affairs; provided that at the time of issuance of the certificate of discontinuance, the captive insurance company shall pay a certificate fee in accordance with chapter 414.]~~ Upon meeting the requirements of subsection (c) and upon the issuance of a certificate of discontinuance by the department of commerce and consumer affairs, the captive insurance company shall cease to be domiciled in this State, and its corporate or other legal existence in this State shall cease. The captive insurance company shall pay a certificate fee at the time that the certificate of discontinuance is issued in accordance with chapter 414.”

SECTION 10. Section 431:19-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each captive insurance company licensed pursuant to this article shall possess and thereafter maintain unimpaired capital and surplus in the amount established by the commissioner; provided that:

- (1) The commissioner shall take into account the nature and volume of business transacted by each captive insurance company, and any other factors deemed appropriate by the commissioner;
- (2) Class 3 ~~[captive insurance]~~ companies shall be subject to other applicable provisions of this chapter that may require capital and surplus in excess of those established by the commissioner; and

- (3) Minimum capital and surplus established by the commissioner shall be no less than the following amounts:
 - (A) Class 1~~[:]~~ company: \$100,000;
 - (B) Class 2~~[:]~~ company: \$250,000;
 - (C) Class 3~~[:]~~ company: \$500,000;
 - (D) Class 4~~[:]~~ company: \$500,000; and
 - (E) Class 5~~[:]~~ company: An amount as determined by the commissioner on a case by case basis.”

SECTION 11. Section 431:19-106, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Captive insurance companies formed under this article shall have the privileges and be subject to the general corporation law, nonprofit corporation law, or limited liability company law of this State as may be applicable, as well as this article. In the event of conflict between any of the foregoing applicable laws of this State and this article, this article shall control.”

SECTION 12. Section 431:19-106.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) A plan of conversion or merger shall be submitted to and be approved by the commissioner in advance of the proposed conversion or merger. The commissioner shall not approve the plan unless:

- (1) The commissioner finds that it is fair, equitable, and consistent with law;
- (2) The plan has been approved~~[:]~~
 - (A) ~~In the case of a stock corporation, by at least two-thirds of the shares entitled to vote at a duly called regular or special meeting of the shareholders at which a quorum is present, or by unanimous written consent of the shareholders;~~
 - (B) ~~In the case of a mutual insurer, by at least two-thirds of the voting interest of the members of the mutual insurer at a duly called regular or special meeting of the membership at which a quorum is present, or by unanimous written consent of the members of the mutual insurer;~~
 - (C) ~~In the case of a reciprocal insurer, by at least two-thirds of the voting interest of the subscribers of the reciprocal insurer at a duly called meeting of the subscribers of the reciprocal insurer, or by unanimous written consent of the subscribers;~~
 - (D) ~~In the case of a nonprofit corporation, by at least two-thirds of the voting interest of the members at a duly called meeting of the members of the corporation, or by unanimous written consent of the members; or~~
 - (E) ~~In the case of a limited liability company, by at least two-thirds of the voting interest of the members at a duly called meeting of the members of the limited liability company, or by unanimous written consent of the members;]~~ by at least two-thirds of the voting interest or unanimous written consent of the voting interest of the captive insurance company;
- (3) The plan provides for:
 - (A) The conversion of existing stockholder, member, or subscriber interests into equal or proportionate interests in the new converted or merged insurer, or such other method and basis for the conversion of the stockholder, member, or subscriber interests that is fair and equitable;

- (B) The purchase or other disposition of the shares of any nonconsenting shareholder of a stock insurer, policyholder interest of any nonconsenting member of a mutual insurer, membership interest of a limited liability company, or subscriber surplus account interest, if any, of a subscriber of a reciprocal insurer, in accordance with either an agreement with any nonconsenting stockholder, member, or subscriber or with the existing ~~[articles or bylaws]~~ organizational documents of the insurer relating to the buyback buyout, or the termination of the stockholder, member, or subscriber interests, if any, or if no such provisions exist, then in accordance with the laws of this State relating to the rights of dissenting shareholders; and
- (C) The novation, assignment, transfer, run-off, or other disposition of ~~[in-force]~~ in-force policies insuring any nonconsenting shareholder, member, or subscriber;
- (4) The conversion or merger will leave the resulting converted insurer or surviving insurer of the merger with capital or surplus funds reasonably adequate to preserve the security of its policyholders and an ability to continue to transact business in the classes of insurance in which it is then authorized to transact; and
- (5) The commissioner finds that the conversion or merger will promote the general good of the State.

(c) After approval of the plan of conversion or merger by the commissioner, the converting or merging insurer shall file with the director of commerce and consumer affairs, appropriate ~~[articles of amendment, articles of conversion, or articles of merger, as the case may be; provided that in the case of the conversion of a reciprocal insurer or limited liability company insurer to a stock or mutual insurer, the existing reciprocal or limited liability company insurer shall file articles of incorporation to commence the corporate existence of the company in the form of a stock or mutual insurer.]~~ organizational documents to commence the existence of the company in its converted or merged form. Documents filed with the director of commerce and consumer affairs pursuant to this subsection shall comply with all applicable requirements for such documents as may be contained in this article and chapter 414, 414D, or 428, as to the extent that these laws are applicable to the conversion or merger."

SECTION 13. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Each captive insurance company other than a ~~[class-3]~~ risk retention captive insurance company shall submit to the commissioner financial statements reporting the financial condition and the results of operations of the insurer written according to generally accepted accounting principles, or other comprehensive basis of accounting as may be deemed appropriate by the commissioner, and audited by an independent certified public accountant, or other qualified professional as deemed appropriate by the commissioner, on or before the last day of the sixth month following the end of the company's fiscal year.

(b) Each ~~[class-3]~~ risk retention captive insurance company shall annually file with the commissioner the following:

- (1) Annual statement and audit:
 - (A) On or before March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an annual statement using the National Association of Insurance Commissioners' annual statement blank plus any additional information required by the commissioner, which shall be a

true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31. The reported information shall be verified by oaths of at least two of the captive's principal officers;

- (B) On or before June 1, or [such] any day subsequent thereto as the commissioner upon request and for cause may specify, an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and results of the operation of the captive; and
 - (C) The annual statement and audit shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, accounting practices and procedures manual, and rules adopted by the commissioner following the practices and procedures prescribed by the National Association of Insurance Commissioners; and
- (2) On or before each March 1, or [such] any day subsequent thereto as the commissioner upon request and for cause may specify, a risk-based capital report in accordance with section 431:3-402; ~~provided that a class 3 association captive insurance company shall not be required to file risk-based capital reports with the National Association of Insurance Commissioners].~~"

SECTION 14. Section 431:19-108, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:

"§431:19-108 Examinations [and], investigations[-], and financial surveillance. (a) The commissioner or any authorized examiner may conduct an examination, investigation, or financial surveillance of any captive insurance company as often as the commissioner deems appropriate[-]; provided that, unless the commissioner requires otherwise:

- (1) An examination shall be conducted at least once every five years for all captive insurance companies, except as provided in paragraph (2); and
- (2) An examination of a [class-3] risk retention captive insurance company shall be conducted no later than three years after its formation and at least once every five years thereafter.

The commissioner or any authorized examiner shall thoroughly inspect and examine the captive insurance company's affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this article."

SECTION 15. Section 431:19-109, Hawaii Revised Statutes, is amended to read as follows:

"§431:19-109 Grounds and procedures for suspension and revocation of certificate of authority[-]; fines. (a) The commissioner may suspend or revoke the certificate of authority of a captive insurance company to do business in this State ~~[may be suspended or revoked by the commissioner]~~ or impose a fine of not less than \$100 nor more than \$10,000 per violation, or any combination of these actions, for any of the following reasons:

- (1) Insolvency or impairment of capital or surplus;
- (2) Failure to meet the requirements of section 431:19-104;

- (3) Refusal or failure to submit an annual report, as required by section 431:19-107 or any other report or statement required by law or by lawful order of the commissioner;
- (4) Failure to comply with the provisions of its own ~~[articles of incorporation, articles of association, or bylaws;]~~ organizational documents;
- (5) Failure to submit to examination or any legal obligation relative thereto, as required by section 431:19-108;
- (6) Refusal or failure to pay the cost of examination pursuant to section 431:19-108;
- (7) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders;
- (8) Failure to maintain actuarially appropriate loss reserves as determined by the commissioner; provided that the commissioner shall issue at least one warning to the captive insurance company to correct the problem prior to suspending or revoking the certificate of authority; and
- (9) Failure otherwise to comply with the laws of this State.

(b) ~~If the commissioner[, upon examination, hearing, or other evidence, finds that any captive insurance company has committed any of the acts specified in subsection (a), the commissioner may suspend or revoke the certificate of authority if the commissioner deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other law.]~~ takes action pursuant to subsection (a), the commissioner shall notify the captive insurance company in writing of the reason for that action. The captive insurance company may make written demand upon the commissioner within ten days of the date of receipt of the notice for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within thirty days of receipt of the written demand and shall be held pursuant to chapter 91."

SECTION 16. Section 431:19-110, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Except for ~~[class 3]~~ risk retention captive insurance companies, captive insurance companies licensed under this article shall be allowed to maintain investments in accordance with a strategic investment policy adopted and monitored by the captive insurance company's governing body, and approved by the commissioner; provided that in addition to the minimum capital and surplus requirements prescribed in section 431:19-104(b), ~~[and the requirements prescribed in subsection (b);]~~ each captive insurance company with an approved strategic investment policy shall maintain investments in one or more of the following forms, which aggregate not less than one hundred per cent of reserves as required by this ~~[code]~~ chapter or the commissioner:

- (1) Cash;
- (2) Irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System;
- (3) Investments in accordance with a strategic investment policy adopted and monitored by the captive insurance company's governing body, and approved by the commissioner;
- (4) Premiums in the course of collection; or
- (5) Other forms approved by the commissioner.

(b) Each captive insurance company that does not maintain a strategic investment policy as described in subsection (a) and ~~[class 3]~~ risk retention

captive insurance companies shall be subject to the restrictions on allowable investments provided under sections 431:6-101 to 431:6-501; provided that the commissioner may approve other assets, investments, and investment provisions as the commissioner deems appropriate.”

SECTION 17. Section 431:19-111.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A class 5 company under this article is one that is not a class 1[~~;~~] company, class 2[~~;~~] company, class 3[~~;~~] company, or class 4 company, and acts only as a reinsurer or excess insurer, or both. Notwithstanding any other provision of this article, a class 5 company authorized under this article may reinsure or provide excess insurance, or both, for the risks and lines of insurance approved by the commissioner.”

SECTION 18. Section 431:19-113, Hawaii Revised Statutes, is amended to read as follows:

“**§431:19-113 Exemption from compulsory associations.** No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this State, except as provided under chapter 386, nor shall any captive insurance company, its insured, or its parent or any affiliated [~~company,~~] entity, or any member organization of its association, receive any benefit from any [~~such~~] plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of [~~such~~] the captive insurance company.”

SECTION 19. Section 431:19-115, Hawaii Revised Statutes, is amended to read as follows:

“**§431:19-115 Laws applicable.** (a) No insurance laws of this State other than those contained in this article, or contained in specific references contained in this section or article, shall apply to captive insurance companies [~~formed under this article. In addition to this article, article 1, article 2, sections 431:3-302 to 431:3-304, section 431:3-307, article 4A, parts I and II of article 5, article 6, article 11, and article 15 of this chapter shall apply to captive insurance companies other than pure captive insurance companies and branch captive insurance companies, unless these other laws are inconsistent with this article or the commissioner by rule, regulation, or order determines, on a case by case basis that these other laws should not apply thereto.~~]

~~In addition to this article, and except as otherwise provided in this article, article 1, article 2, article 6, article 11, and article 15 of this chapter shall apply to class 5 companies, unless these other laws are inconsistent with this article or the commissioner by rule, regulation, or order determines, on a case by case basis that these other laws should not apply thereto.~~

~~In addition to this article and the articles or portions thereof referenced in this section, chapter 431K shall apply to risk retention captive insurance companies authorized under this article.~~

(b) ~~The application of the foregoing provisions shall not diminish the commissioner’s authority for exemption as may be contained therein or as may be deemed appropriate under the circumstances.~~

~~In addition, the commissioner may adopt rules pursuant to chapter 91 as the commissioner deems necessary in connection with the financial oversight and regulation of captive insurance companies].~~

(b) Sections 431:3-302 to 431:3-304 and 431:3-307; articles 1, 2, 4A, 5, 6, 9A, 9B, 9C, 11, 11A, and 15; and chapter 431K shall apply to risk retention captive insurance companies.

(c) Articles 1, 2, 6, and 15 shall apply to class 5 companies.

(d) If any of the laws specified in this section are inconsistent with this article, this article shall apply unless the commissioner by rule or order determines otherwise on a case-by-case basis.

(e) The application of the foregoing provisions shall not diminish the commissioner's authority for exemption as may be contained therein or as may be deemed appropriate under the circumstances."

SECTION 20. Section 431:19-203, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "counterparty" to read:

"“Counterparty” means the insurer that cedes risk to a special purpose financial captive insurance company which, unless otherwise approved by the commissioner, shall be the parent or an affiliated [company] entity of the special purpose financial captive insurance company.”

2. By repealing the definition of “organizational document”.

[““Organizational document” means the special purpose financial captive insurance company’s articles of incorporation, articles of organization, by-laws, operating agreement, or any other document that establishes the special purpose financial captive insurance company as a legal entity or prescribes its existence.”]

SECTION 21. Section 431:19-308, Hawaii Revised Statutes, is amended to read as follows:

“[§431:19-308] Applicable laws. A sponsored captive insurance company shall be subject to this part and to part [H:] I. If there is any conflict between this part and part [H:] I, this part shall control.”

SECTION 22. Section 431:19-309, Hawaii Revised Statutes, is amended to read as follows:

“[§431:19-309] Existing licenses. Except as otherwise determined by the commissioner, a captive insurance company that has been issued a certificate of authority by the commissioner pursuant to section 431:19-102 as of July 1, 2008, and is licensed as a class 4 [captive] company shall not be required to re-apply for a certificate of authority under this part, but shall otherwise be subject to this part as a sponsored captive insurance company; provided that the commissioner may by order require the captive insurance company to take any action that the commissioner determines is reasonably necessary to bring the captive insurance company into compliance with this part.”

SECTION 23. Section 431:19-101.3, Hawaii Revised Statutes, is repealed.

SECTION 24. Statutory material to be repealed is bracketed and stricken. New material is underscored.¹

SECTION 25. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended, permits states to establish a basic health program to provide health benefits to certain low-income individuals who do not qualify for medicaid and who would otherwise be eligible to purchase health insurance through a health insurance exchange. Under the basic health program, states would receive federal subsidies to finance a portion of the cost of providing basic health insurance benefits for these individuals.

The legislature further finds that, although the intent of the program would be to expand access to health care, there remains a number of unknown factors that may significantly affect the program's ongoing cost to the State and its ability to successfully implement the program. Although federal subsidies are promised to support elements of the basic health program, the amount of federal support available is not clear, nor is it firmly established that the federal government is committed to continuing those subsidies at sustained levels for the long term. To compound the problem further, the federal agency designated to administer the basic health program, to date, has issued no regulations or detailed guidance to the states regarding the operation or financing of many aspects of the basic health program called for in the Affordable Care Act.

The implementation of a basic health program in Hawaii may present opportunities for the State to help provide health insurance for low-income individuals, but it also may present significant financial risks and costs to the State both short-term and long-term. The legislature finds that several other states have already undertaken studies of the feasibility of implementing a basic health program, and they have reached inconclusive results due to the many unknown factors involved in operating such a program. The legislature recognizes that the creation of a basic health program is an option, not a mandate, for the State. The legislature also recognizes that the insurance commissioner is preparing to initiate an actuarial analysis on the impacts of a basic health program in Hawaii. Accordingly, the legislature finds that the decision to create a basic health program in Hawaii is a significant policy decision that first deserves careful analysis of the financial costs and benefits to Hawaii, the effects of the program on other agencies and organizations in the State, including the Hawaii health connector, and the delivery of health care as a whole.

The purpose of this Act is to:

- (1) Require legislative authorization for the establishment of a basic health program, pursuant to the Patient Protection and Affordable Care Act; and
- (2) Require the insurance division of the department of commerce and consumer affairs to undertake a feasibility study of establishing a basic health program in Hawaii.

SECTION 2. Any department, agency, officer, or other entity of the State, administratively or otherwise, seeking to establish a basic health program, as contemplated by section 1331 of the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended, shall submit proposed legislation to the speaker of the house of representatives and the president of the senate no later than twenty days prior to the convening of a regular session of the legislature, for introduction and consideration by the legislature, that authorizes or

directs the establishment and operation of a basic health program. A report on the feasibility, plan for sustainability, and benefits of establishing a basic health plan shall accompany the requested legislation.

SECTION 3. (a) The insurance division of the department of commerce and consumer affairs shall prepare a comprehensive study on the feasibility of establishing a basic health program in Hawaii that includes but is not limited to an analysis of the:

- (1) Short-term and long-term financial costs and benefits to the State;
- (2) Immediate and ongoing availability of federal funds to support the program and requirements for long-term sustainability;
- (3) Options for selecting providers for the program;
- (4) Effect of the program on relevant existing health care providers and health care organizations, programs, and agencies, including the Hawaii health connector;
- (5) Potential benefits to enrollees of the program compared to the potential drawbacks to these same individuals if a basic health program is not offered; and
- (6) Any other considerations that may impact the overall delivery of health care in Hawaii.

(b) The insurance division of the department of commerce and consumer affairs shall submit a report of its findings and recommendations including any proposed legislation to the speaker of the house of representatives and the president of the senate no later than twenty days prior to the convening of the regular session of 2013.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

ACT 255

S.B. NO. 2103

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that physician assistants, licensed practical nurses, and registered nurses provide valuable medical care to patients under the orders of licensed physicians. Licensed practical nurses and registered nurses currently must use reasonable judgment in carrying out the prescribed medical orders of a licensed dentist, medical doctor, osteopathic physician, or podiatrist, or the orders of an advanced practice registered nurse. The legislature also finds that the relevant statutory language fails to explain whether licensed practical nurses and registered nurses are required to administer orders given by physician assistants. That lack of clarity has led to confusion between hospital administrators and nurses when physician assistants write or give verbal orders in a hospital setting.

The purpose of this Act is to clarify that licensed practical nurses and registered nurses are required to use reasonable judgment in carrying out the orders of a licensed physician assistant practicing with physician supervision, and acting as an agent of the supervising physician.

SECTION 2. Section 457-2, Hawaii Revised Statutes, is amended by amending the definitions of “the practice of nursing as a licensed practical nurse” and “the practice of nursing as a registered nurse” to read as follows:

““The practice of nursing as a licensed practical nurse” means the performance of those acts commensurate with the required educational preparation and demonstrated competency of the individual, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but shall not be limited to: implementation of basic nursing procedures in the plan of care; observing and caring for individuals at all levels of the health spectrum, giving counsel and acting to safeguard life and health and functioning as a part of the health care team, under the direction of a dentist, physician, osteopathic physician, registered nurse, or podiatrist licensed in accordance with chapter 448, 453, 457, or 463E[-]; or under the orders of a physician assistant licensed pursuant to chapter 453, practicing with physician supervision as required by chapter 453, and acting as the agent of the supervising physician; administration of treatment and medication as prescribed; promotion of health maintenance of individuals, families, or groups; or teaching and supervision of auxiliary personnel.

“The practice of nursing as a registered nurse” means the performance of professional services commensurate with the educational preparation and demonstrated competency of the individual having specialized knowledge, judgment, and skill based on the principles of the biological, physical, behavioral, and sociological sciences and nursing theory, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include but shall not be limited to observation, assessment, development, implementation, and evaluation of a plan of care, health counseling, supervision and teaching of other personnel, and teaching of individuals, families, and groups in any stage of health or illness; administration, supervision, coordination, delegation, and evaluation of nursing practice; provision of health care to the patient in collaboration with other members of the health care team as autonomous health care professionals providing the nursing component of health care; or use of reasonable judgment in carrying out prescribed medical orders of a licensed dentist, physician, osteopathic physician, or podiatrist licensed in accordance with chapter 448, 453, or 463E [~~or the~~]; orders of an advanced practice registered nurse recognized in accordance with this chapter[-]; or the orders of a physician assistant licensed pursuant to chapter 453, practicing with physician supervision as required by chapter 453, and acting as the agent of the supervising physician.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval and shall be repealed on July 1, 2017; provided that the definitions of “the practice of nursing as a licensed practical nurse” and “the practice of nursing as a registered nurse” under section 457-2, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.

(Approved July 6, 2012.)

ACT 256

S.B. NO. 3062

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
LIFE SETTLEMENTS**

PART I. GENERAL PROVISIONS

§ -1 **Short title.** This chapter may be cited as the Life Settlements Act.

§ -2 **Definitions.** As used in this chapter, unless the content otherwise requires:

“Advertisement” means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, that is published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a policy or an interest in a policy pursuant to a life settlement contract.

“Broker” means a person who, on behalf of an owner and for a fee, commission, or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and providers, represents only the owner, and owes a fiduciary duty to the owner to act according to the owner’s instructions, and in the best interest of the owner, notwithstanding the manner in which the broker is compensated. “Broker” does not include an attorney, certified public accountant, or financial planner retained in the type of practice customarily performed in their professional capacity to represent the owner, whose compensation is not paid directly or indirectly by the provider or any other person, except the owner.

“Business of life settlements” means an activity involved in but not limited to offering to enter into the soliciting, negotiating, procuring, effectuating, monitoring, or tracking of life settlement contracts.

“Certificate” means a certificate issued pursuant to a group policy.

“Chronically ill” means:

- (1) Being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence;
- (2) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
- (3) Having a level of disability similar to that described in paragraph (1) as determined by the United States Secretary of Health and Human Services.

“Commissioner” means the insurance commissioner.

“Financing entity” means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, but:

- (1) Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one or more policies; and
- (2) Who has an agreement in writing with one or more providers to finance the acquisition of life settlement contracts.

The term shall not include a non-accredited investor or purchaser.

"Financing transaction" means a transaction in which a licensed provider obtains financing from a financing entity including, without limitation, any secured or unsecured financing, any securitization transaction, or any securities offering that is either registered or exempt from registration under federal and state securities law.

"Insured" means the person covered under the policy being considered for sale in a life settlement contract.

"Life expectancy" means the arithmetic mean of the number of months the insured under the policy to be settled can be expected to live as determined by a life expectancy company considering medical records and appropriate experiential data.

"Life insurance producer" means any person licensed in this State as a resident or nonresident insurance producer who has received qualification for life insurance pursuant to article 9A of chapter 431.

"Life settlement contract" means:

- (a) (1) A written agreement entered into between a provider and an owner, establishing the terms under which compensation or any thing of value will be paid, which compensation or thing of value is less than the expected death benefit of the owner's policy or certificate, in return for the owner's assignment, transfer, sale, devise, or bequest of the death benefit or any portion of the policy or certificate for compensation, where the minimum value of the contract is greater than a cash surrender value or accelerated death benefit available under the policy or certificate at the time of an application for a life settlement contract;
- (2) The transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy or certificate if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this State; or
- (3) (A) A written agreement for a loan or other lending transaction, secured primarily by an individual or group policy; or
(B) A premium finance loan made for a policy on or before the date of issuance of the policy where:
 - (i) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;
 - (ii) The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or
 - (iii) The owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

"Life settlement contract" does not include:

- (b) (1) A policy loan by a life insurance company pursuant to the terms of the policy or accelerated death provisions contained in the policy, whether issued with the original policy or as a rider;

- (2) A premium finance loan, as defined herein, or any loan made by a bank or other licensed financial institution, so long as neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;
- (3) A collateral assignment of a policy by an owner;
- (4) A loan made by a lender that does not violate any insurance premium finance law of this State; provided that the loan does not qualify as a life settlement contract;
- (5) An agreement where all the parties:
 - (A) Are closely related to the insured by blood or law; or
 - (B) Have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;
- (6) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
- (7) A bona fide business succession planning arrangement:
 - (A) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;
 - (B) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or
 - (C) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;
- (8) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or
- (9) Any other contract, transaction, or arrangement that is a life settlement contract and that the commissioner determines is not of the type intended to be regulated by this chapter.

"Net death benefit" means the amount of the policy or certificate to be settled less any outstanding debts or liens.

"Owner" means the owner of a policy or a certificate holder under a group policy, with or without a terminal illness, who enters or seeks to enter into a life settlement contract, but shall not be limited to an owner of a policy or a certificate holder under a group policy that insures the life of an individual with a terminal or chronic illness or condition, except where specifically addressed.

"Owner" does not include:

- (1) Any provider or other licensee under this chapter;
- (2) A qualified institutional buyer as defined in Rule 144A of the Securities Act of 1933, as amended;
- (3) A financing entity;
- (4) A special purpose entity; or
- (5) A related provider trust.

"Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

“Person” means any natural person or legal entity, including but not limited to a partnership, limited liability company, association, trust, or corporation.

“Policy” means an individual or group policy, certificate, contract, or arrangement of life insurance owned by a resident of this State, regardless of whether delivered or issued for delivery in this State.

“Premium finance loan” means a loan made primarily for the purposes of making premium payments on a policy, which loan is secured by an interest in such policy.

“Provider” means a person, other than an owner, who enters into or effectuates a life settlement contract with an owner. The term does not include:

- (1) Any bank, savings bank, savings and loan association, or credit union;
- (2) A licensed lending institution or creditor or secured party pursuant to a premium finance loan agreement that takes an assignment of a policy or certificate as collateral for a loan;
- (3) The insurer of a policy or rider to the extent of providing accelerated death benefits, riders, or cash surrender value;
- (4) Any natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of a policy or certificate for compensation or anything of value less than the expected death benefit payable under the policy;
- (5) A purchaser;
- (6) Any authorized or eligible insurer that provides stop loss coverage to a provider, purchaser, financing entity, special purpose entity, or related provider trust;
- (7) A financing entity;
- (8) A special purpose entity;
- (9) A related provider trust;
- (10) A broker; or
- (11) An accredited investor or qualified institutional buyer as defined respectively in Rule 501 of Regulation D and Rule 144A of the Securities Act of 1933, as amended, who purchases a life settlement contract from a provider.

“Purchased policy” means a policy or certificate that has been acquired by a provider pursuant to a life settlement contract.

“Purchaser” means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust that is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a policy or a certificate that has been the subject of a life settlement contract.

“Related provider trust” means a titling trust or other trust established by a licensed provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction, that includes a written agreement with the licensed provider under which the licensed provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to life settlement transactions available to the insurance division as if those records and files were maintained directly by the licensed provider.

“Settled policy” means a policy or certificate that has been acquired by a provider pursuant to a life settlement contract.

“Special purpose entity” means a corporation, partnership, trust, limited liability company, or other legal entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or pro-

vider in connection with a transaction in which the securities in the special purpose entity:

- (1) Are acquired by the owner or by a "qualified institutional buyer" as defined in Rule 144A of the Securities Act of 1933, as amended; or
- (2) Pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

"Stranger-originated life insurance" means a practice or plan to initiate a policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured, and includes:

- (1) Arrangements in which life insurance is purchased with resources or guarantees from or through a person or entity who at the time of policy inception, could not lawfully initiate the policy by oneself or itself, and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy, the policy benefits, or both, to a third party; and
- (2) Trusts created to give the appearance of insurable interest and used to initiate policies for investors.

"Stranger-originated life insurance" does not include those practices set forth in subsection (b) of the definition of "life settlement contract".

"Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less.

§ -3 Licensing requirements. (a) No person, wherever located, shall act as a provider or broker with an owner who is a resident of this State, without first having obtained a license from the commissioner.

(b) Application for a provider or broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a fee in the amount provided by section 431:7-101.

(c) A person, wherever located, may act as a broker with an owner who is a resident of this State, if the person is a life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this State or the producer's home state for at least one year and is issued a broker license in this State.

(d) Not later than thirty days from the first day of operating as a broker, the life insurance producer shall notify the commissioner that the life insurance producer is acting as a broker on a form prescribed by the commissioner, and shall pay a fee in the amount provided by section 431:7-101. Notification shall include an acknowledgment by the life insurance producer that the life insurance producer will operate as a broker in accordance with this chapter.

(e) The insurer that issued the policy that is the subject of a life settlement contract shall not be responsible for any act or omission of a broker, provider, or purchaser, arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a life settlement contract from the provider, purchaser, or broker in connection with the life settlement contract.

(f) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner in the type of practice customarily performed in the person's professional capacity, and whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts on behalf of the owner without obtaining a license as a broker.

(g) Licenses are issued and renewed in accordance with article 9A of chapter 431 upon payment of fees in the amounts required under section 431:7-101. Failure to pay the fees within the terms prescribed shall result in the automatic inactivation of the license.

(h) The applicant shall provide such information as the commissioner may require on forms prepared by the commissioner. The commissioner shall have authority, at any time, to require such applicant to fully disclose the identity of its stockholders, other than stockholders owning fewer than ten per cent of the shares of an applicant whose shares are publicly traded, and the identity of its partners, officers, and employees. The commissioner may, in the exercise of the commissioner's sole discretion, refuse to issue such a license in the name of any person if not satisfied that any officer, employee, identified stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards under subsection (j).

(i) A provider license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as a licensee under the license, if those persons are named in the application and any supplements to the application. A business entity licensed pursuant to this subsection shall designate an individual who is responsible for the actions of the entity and its agents. The designated individual shall be licensed pursuant to this chapter.

(j) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and may issue a provider or a broker license if the commissioner finds that the applicant:

- (1) If a provider, has provided a detailed plan of operation;
- (2) Is competent and trustworthy and intends to transact its business in good faith;
- (3) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied;
- (4) If a legal entity, is formed or organized pursuant to the laws of this State or is a foreign legal entity authorized to transact business in this State, or provides a certificate of good standing from the state of its domicile; and
- (5) Has provided to the commissioner an anti-fraud plan that meets the requirements of section -48.

(k) Each licensed nonresident broker or provider shall appoint the commissioner as its agent to receive service of legal process issued against the broker or provider in this State upon causes of action arising within this State. Service upon the commissioner as agent shall constitute effective legal service upon the broker or provider. The appointment shall be irrevocable for as long as there could be any cause of action against the broker or provider arising out of the broker's or provider's insurance transactions in this State. Service of process on the commissioner shall be made in accordance with section 431:2-206.

(l) Each licensee shall file with the commissioner on or before the first day of March of each year an annual statement containing the information as the commissioner by rule may prescribe.

(m) A provider may not use any person to perform the functions of a broker unless the person holds a current, valid license as a broker.

(n) A broker may not use any person to perform the functions of a provider as defined in this chapter unless such person holds a current, valid license as a provider, and as provided in this section.

(o) A provider or broker shall provide to the commissioner new or revised information about officers, ten per cent or more stockholders, partners, directors, members, or designated employees within thirty days of the change.

§ -4 License suspension, revocation, or refusal to renew. (a) The commissioner may suspend, revoke, or refuse to renew the license of any licensee if the commissioner finds that:

- (1) There was any material misrepresentation in the application for the license;
- (2) The licensee or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;
- (3) The provider demonstrates a pattern of unreasonably withholding payments to policy owners;
- (4) The licensee no longer meets the requirements for initial licensure;
- (5) The licensee or any officer, partner, member, or director has been convicted of a felony, or of any misdemeanor of which criminal fraud is an element or has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless of whether a judgment of conviction has been entered by the court;
- (6) The provider has entered into any life settlement contract that has not been approved pursuant to this chapter;
- (7) The provider has failed to honor contractual obligations set out in a life settlement contract;
- (8) The provider has assigned, transferred, or pledged a settled policy to a person other than a provider licensed in this State, a purchaser, an accredited investor or qualified institutional buyer as defined respectively in Rule 501 of Regulation D or Rule 144A of the federal Securities Act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust; or
- (9) The licensee or any officer, partner, member, or key management personnel has violated this chapter.

(b) Before the commissioner may deny a license application or suspend, revoke, or refuse to renew the license of any licensee under this chapter, the commissioner shall conduct a hearing in accordance with chapter 91.

§ -5 Contract requirements. (a) No person may use any form of life settlement contract in this State unless it has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions, if any, for life insurance forms, policies, and contracts.

(b) No insurer may, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts in this State.

(c) A person shall not use a life settlement contract form or provide to an owner a disclosure statement form in this State unless first filed with and approved by the commissioner. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of

sections -21, -31, -33, and -43 or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner. At the commissioner's discretion, the commissioner may require the submission of advertising material.

§ -6 Reporting requirements and privacy. (a) For any policy settled within five years of policy issuance, each provider shall file with the commissioner on or before March 1 of each year an annual statement containing the information as the commissioner may prescribe by rule. In addition to any other requirements, the annual statement shall:

- (1) Specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year; and
- (2) Include the names of the insurance companies whose policies have been settled and the brokers who have settled said policies.

The information shall be limited to only those transactions where the insured is a resident of this State and shall not include individual transaction data regarding the business of life settlements or information that there is a reasonable basis to believe could be used to identify the owner or the insured.

Every provider that wilfully fails to file an annual statement as required in this section, or wilfully fails to reply within thirty days to a written inquiry by the commissioner in connection therewith, in addition to other penalties provided by this chapter, and upon due notice and opportunity to be heard, shall be subject to a penalty of up to \$250 per day of delay, not to exceed \$25,000 in the aggregate, for each such failure.

(b) Except as otherwise allowed or required by law, a provider, broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure:

- (1) Is necessary to effect a life settlement contract between the owner and a provider, and the owner and insured have provided prior written consent to the disclosure;
- (2) Is necessary to effectuate the sale of life settlement contracts, or interests therein, as investments, so long as the sale is conducted in accordance with applicable state and federal securities law and the owner and the insured have both provided prior written consent to the disclosure;
- (3) Is provided in response to an investigation or examination by the commissioner pursuant to the requirements of section -17 or any other governmental officer or agency;
- (4) Is a term or condition to the transfer of a policy by one provider to another provider, in which case the receiving provider shall be required to comply with the confidentiality requirements of this section;
- (5) Is necessary to allow the provider or broker or their authorized representatives to make contacts for the purpose of determining health status. For the purposes of this paragraph, the term "authorized representative" shall not include any person who has or may have any financial interest in the life settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity. A provider or broker shall require its authorized

representative to agree in writing to adhere to the privacy provisions of this section; or

(6) Is required to purchase stop loss coverage.

(c) Non-public personal information solicited or obtained in connection with a proposed or actual life settlement contract shall be subject to the provisions applicable to financial institutions under the federal Gramm-Leach-Bliley Act, P.L. 106-102, and all other applicable state and federal laws relating to confidentiality of non-public personal information.

PART II. EXAMINATIONS

§ -11 Examination. (a) The commissioner may, when the commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The commissioner may order any licensee or applicant to produce any records, books, files or other information reasonably necessary to ascertain whether such licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(b) In lieu of an examination under this chapter of any foreign or alien licensee licensed in this State, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner or the chief insurance regulatory official for the licensee's state of domicile or port-of-entry state.

(c) Records of all consummated transactions and life settlement contracts shall be maintained by the provider for three years after the death of the insured and shall be available to the commissioner for inspection during reasonable business hours.

§ -12 Conduct of examinations. (a) Upon determining that an examination under section -11 should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall use methods common to the examination of any life settlement licensee and shall use the guidelines and procedures set forth in an examiners' handbook adopted by a national organization.

(b) Every licensee or person from whom information is sought, including its officers, directors, employees, and agents, shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the life settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to chapter 91.

(c) The commissioner shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon

proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence.

(d) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

(e) Nothing in this chapter shall be construed to limit the commissioner's authority to terminate or suspend an examination to pursue other legal or regulatory action pursuant to the insurance laws of this State. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing in this chapter shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee work papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may, in the commissioner's sole discretion, deem appropriate.

§ -13 Examination reports. (a) Examination reports shall be comprised of only facts appearing upon the books, from the testimony of its officers, directors, employees, or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report and which shall become part of the report or to request a hearing on any matter in dispute.

(c) In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

§ -14 Confidentiality of examination information. (a) Names and individual identification data for all owners, purchasers, and insureds shall be considered private and confidential information and shall not be disclosed by the commissioner, unless the disclosure is to another regulator or is required by law.

(b) Except as otherwise provided in this chapter, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee, shall be confidential by law and privileged, shall not be subject to chapter 92F, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The licensee being examined may have access to all documents used to make the report.

§ -15 Examiner; conflict of interest. (a) An examiner shall not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being:

- (1) An owner;
- (2) An insured in a policy or life settlement contract; or
- (3) A beneficiary in a policy that is proposed for a life settlement contract.

(b) Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

§ -16 Immunity from liability. (a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

(b) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subsection does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection (a).

(c) A person identified in subsection (a) or (b) shall be entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

§ -17 Investigative authority of the commissioner. The commissioner may investigate suspected fraudulent life settlement acts and persons engaged in the business of life settlements.

PART III. ADVERTISING

§ -21 Advertising. (a) A broker or provider licensed pursuant to this chapter may conduct or participate in advertisements within this State. Such advertisements shall comply with all advertising and marketing laws or rules adopted by the commissioner that are applicable to life insurers or to brokers and providers licensed pursuant to this chapter.

(b) Advertisements shall be accurate, truthful, and not misleading in fact or by implication.

(c) No person or trust shall:

- (1) Directly or indirectly market, advertise, solicit, or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy; or

- (2) Use the words "free", "no cost", or words of similar import in the marketing, advertising, soliciting, or otherwise promoting of the purchase of a policy.

PART IV. DISCLOSURES AND GENERAL PROCEDURES

§ -31 **Disclosures to owners.** (a) The provider shall provide in writing, in a separate document that is signed by the owner and provider, the following information to the owner no later than the date the life settlement contract is signed by all parties:

- (1) The fact that possible alternatives to life settlement contracts exist, including but not limited to accelerated benefits offered by the issuer of the policy;
- (2) The fact that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax advisor;
- (3) The fact that the proceeds from a life settlement contract could be subject to the claims of creditors;
- (4) The fact that receipt of proceeds from a life settlement contract may adversely affect the recipients' eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agencies;
- (5) The fact that the owner has a right to terminate a life settlement contract within fifteen days of the date it is executed by all parties and the owner has received the disclosures contained herein. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider;
- (6) The fact that proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract;
- (7) The fact that entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the owner and that assistance should be sought from a professional financial advisor;
- (8) The amount and method of calculating the compensation paid or to be paid to the broker, or any other person acting for the owner in connection with the transaction, wherein the term compensation includes anything of value paid or given;
- (9) The date by which the funds will be available to the owner and the transmitter of the funds;
- (10) The fact that the commissioner shall require delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process;
- (11) The following language:
"All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's

identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.”;

- (12) The fact that the commissioner shall require providers and brokers to print separate signed fraud warnings on their applications and on their life settlement contracts as follows:
“Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.”;
- (13) The fact that the owner may be contacted by either the provider or broker or its authorized representative for the purpose of determining the owner’s health status or to verify the owner’s address;
- (14) The affiliation, if any, between the provider and the issuer of the policy to be settled;
- (15) That a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner’s instructions and in the best interest of the owner;
- (16) The name, address, and telephone number of the provider;
- (17) The name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents; and
- (18) The fact that a change of ownership could in the future limit the insured’s ability to purchase future insurance on the insured’s life because there is a limit to how much coverage insurers will issue on one life.

(b) The written disclosures, including any affiliations or contractual arrangements between the provider and the broker, shall be conspicuously displayed in any life settlement contract furnished to the owner by a provider.

(c) A broker shall provide the owner and the provider with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:

- (1) The name, business address, and telephone number of the broker;
- (2) A full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;
- (3) A written disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contract;
- (4) The name of each broker who receives compensation and the amount of compensation received by that broker, which compensation includes anything of value paid or given to the broker in connection with the life settlement contract;
- (5) A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purpose of this paragraph, “gross offer or bid” means the total amount or value offered by the provider for the purchase of

one or more life insurance policies, inclusive of commissions and fees; and

- (6) The fact that the failure to provide the disclosures or rights described in this section shall be deemed an unfair trade practice under section 480-2.

§ -32 Disclosure to insurer. (a) Without limiting the ability of an insurer from assessing the insurability of a policy applicant and determining whether or not to issue the policy, and in addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(b) If, as described in subsection (a)(3) of the definition of "life settlement contract" in section -2, a loan provides funds that can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the policy and loan, the application shall be rejected as a violation of the prohibited practices in section -41.

(c) If the financing does not violate section -41 in this manner, the insurance carrier:

- (1) May make disclosures to the applicant and the insured, either on the application or an amendment to the application to be completed no later than the delivery of the policy, including the following:

"If you have entered into a loan arrangement where the policy is used as collateral, and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

- (1) A change of ownership could lead to a stranger owning an interest in the insured's life;
- (2) A change of ownership could in the future limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life;
- (3) Should there be a change of ownership and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status, and/or other factors may reduce the ability to obtain coverage and/or may result in significantly higher premiums;
- (4) You should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan"; and

- (2) May require certifications, such as the following, from the applicant or the insured:

- "(1) I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy;
- (2) My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy; and
- (3) The borrower has an insurable interest in the insured."

§ -33 General rules. (a) A provider entering into a life settlement contract with any owner of a policy, wherein the insured is terminally or chronically ill, shall first obtain:

- (1) If the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and
- (2) A document in which the insured consents to the release of the insured's medical records to a provider, broker, or insurance producer and, if the policy was issued less than two years from the date of application for a life settlement contract, to the insurance company that issued the policy.

The provider, broker, or its authorized representative shall be limited to contact for the purpose of determining the owner's health status or to verify the owner's address, once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

(b) The insurer shall respond to a request for verification of coverage submitted by a provider, broker, or life insurance producer, not later than thirty calendar days of the date the request is received. The request for verification of coverage shall be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.

(c) Before or at the time of execution of the life settlement contract, the provider shall obtain a witnessed document in which the owner:

- (1) Consents to the life settlement contract;
- (2) Represents that the owner has a full and complete understanding of the life settlement contract;
- (3) Represents that the owner has a full and complete understanding of the benefits of the policy;
- (4) Acknowledges that the owner is entering into the life settlement contract freely and voluntarily; and
- (5) For persons with a chronic or terminal illness or condition, acknowledges that the insured has a chronic or terminal illness and that the chronic or terminal illness or condition was diagnosed after the policy was issued.

(d) An insurer shall not unreasonably delay effecting change of ownership or beneficiary in connection with any life settlement contract lawfully entered into in this State or with a resident of this State.

(e) If a broker or life insurance producer performs any of the activities required of the provider under this section, the provider shall be deemed to have fulfilled the requirements of this section.

(f) If a broker performs those verification of coverage activities required of the provider, the provider is deemed to have performed those activities.

(g) Within twenty days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that policy that the policy has become subject to a life settlement contract. The notice shall be accompanied by the documents required by section -32(c).

(h) All life settlement contracts entered into in this State shall provide that the owner may rescind the contract on or before fifteen days after the date it is executed by all parties thereto. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds

and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

(i) Within three business days after receipt from the owner of documents to effect the transfer of the policy, the provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the owner within three business days of acknowledgment of the transfer from the insurer.

(j) Failure to tender the life settlement contract proceeds to the owner by the date disclosed to the owner shall render the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. A failure to give written notice of the right of rescission hereunder shall toll the right of rescission until thirty days after the written notice of the right of rescission has been given.

(k) Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract shall be computed as a percentage of the offer obtained, not the face value of the policy. Nothing in this section shall be construed as prohibiting a broker from reducing such broker's fee below this percentage if the broker so chooses.

(l) The broker shall disclose to the owner anything of value paid or given to a broker and that relates to a life settlement contract.

(m) No person at any time prior to or at the time of the application for, or issuance of, a policy, or during a two-year period commencing with the date of issuance of the policy, shall enter into a life settlement contract regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur. This prohibition shall not apply if the owner certifies to the provider that:

- (1) The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy; provided that the total of the time covered under the conversion policy plus the time covered under the prior policy is at least two years. The time covered under a group policy shall be calculated without regard to a change in insurance carriers; provided further that the coverage has been continuous and under the same group sponsorship; or
- (2) The owner submits independent evidence to the provider that one or more of the following conditions have been met within the two-year period:
 - (A) The owner or insured is chronically or terminally ill;
 - (B) The owner or insured disposes of ownership interests in a closely-held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the policy was initially issued;
 - (C) The owner's spouse dies;
 - (D) The owner divorces the owner's spouse;
 - (E) The owner retires from full-time employment;
 - (F) The owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or

- (G) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets.

Copies of the independent evidence required by paragraph (2) shall be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider. Nothing in this section shall prohibit an insurer from exercising its right to contest the validity of any policy.

If the provider submits to the insurer a copy of independent evidence required by paragraph (2) when the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy shall be deemed to establish that the life settlement contract satisfies the requirements of this section.

§ -34 Buyer's guide. The commissioner by rule shall require delivery of a buyer's guide or a similar consumer advisory package to owners during the process of soliciting a life settlement contract.

PART V. MISCELLANEOUS PROVISIONS

§ -41 Prohibited practices. (a) It is unlawful for any person to:

- (1) Enter into a life settlement contract if the person knows or reasonably should have known that the policy was obtained by means of a false, deceptive, or misleading application for such policy;
- (2) Engage in any transaction, practice, or course of business if the person knows or reasonably should have known that the intent was to avoid the notice requirements of this chapter;
- (3) Engage in any fraudulent act or practice in connection with any transaction relating to any life settlement contract involving an owner who is a resident of this State;
- (4) Issue, solicit, market, or otherwise promote the purchase of a policy for the purpose of or with an emphasis on settling the policy;
- (5) Enter into a premium finance agreement with any person or agency, or any person affiliated with the person or agency, pursuant to which the person shall receive any proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any life settlement contract or other transaction related to such policy that are in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement; provided that any payments, charges, fees or other amounts in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or to the owner's estate if the owner is not living at the time of the determination of the overpayment;
- (6) With respect to any policy or life settlement contract and a broker, knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to any provider, financing entity, or related pro-

vider trust that is controlling, controlled by, or under common control with such broker;

- (7) With respect to any policy or life settlement contract and a provider, knowingly enter into a life settlement contract with an owner, if, in connection with such life settlement contract, anything of value will be paid to a broker that is controlling, controlled by, or under common control with such provider or the financing entity or related provider trust that is involved in such life settlement contract;
 - (8) With respect to a provider, enter into a life settlement contract unless the life settlement contract promotional, advertising, and marketing materials, as may be prescribed by rule, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is free for any period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of this chapter;
 - (9) With respect to any life insurance producer, insurance company, broker, or provider, make any statement or representation to the applicant or policyholder in connection with the sale or financing of a policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy;
 - (10) Knowingly and intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter; and
 - (11) With respect to a person in the business of life settlements, knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.
- (b) A violation of this section shall be deemed a fraudulent life settlement act.

§ -42 Fraudulent life settlement acts prohibited. It is a violation of this chapter for any person, provider, broker, or any other party related to the business of life settlements, to commit a fraudulent life settlement act.

For the purposes of this part, "fraudulent life settlement act" includes:

- (1) Acts or omissions committed by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or agents to engage in acts, including but not limited to:
 - (A) Presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a provider, premium finance lender, broker, insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:
 - (i) An application for the issuance of a policy or life settlement contract;
 - (ii) The underwriting of a policy or life settlement contract;
 - (iii) A claim for payment or benefit pursuant to a policy or life settlement contract;
 - (iv) Premiums paid on a policy;
 - (v) Payments and changes in ownership or beneficiary made in accordance with the terms of a policy or life settlement contract;

- (vi) The reinstatement or conversion of a policy;
- (vii) The solicitation, offer to enter into, or effectuation of a policy or life settlement contract;
- (viii) The issuance of written evidence of a policy or life settlement contract;
- (ix) Any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a policy; or
- (x) Entering into any practice or plan that involves stranger-originated life insurance;
- (B) Failing to disclose to the insurer, where the insurer requests such disclosure, that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy;
- (C) Employing any device, scheme, or artifice to defraud in the business of life settlements; or
- (D) In the solicitation, application, or issuance of a policy, employing any device, scheme, or artifice in violation of state insurable interest laws;
- (2) Acts or omissions committed by any person who, in the furtherance of a fraud or to prevent the detection of a fraud, commits or permits its employees or its agents to engage in to:
 - (A) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of life settlements;
 - (B) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
 - (C) Transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements;
 - (D) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner;
 - (E) Engage in embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a provider, insurer, insured, owner, insurance, policy owner, or any other person engaged in the business of life settlements or insurance;
 - (F) Knowingly and with intent to defraud, enter into, broker, or otherwise deal in a life settlement contract, the subject of which is a policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the owner or the owner's agent intended to defraud the policy's issuer;
 - (G) Attempt to commit, assist, aid, or abet in the commission of, or conspire to commit the acts or omissions specified in this section; or
 - (H) Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this chapter for the purpose of evading or avoiding the provisions of this chapter.

§ -43 Fraud warning required. (a) Life settlement contracts and applications for life settlement contracts, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: "Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(b) The lack of a statement as required in subsection (a) shall not constitute a defense in any prosecution for a fraudulent life settlement act.

§ -44 Mandatory reporting of fraudulent life settlement acts. (a) Any person engaged in the business of life settlements having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(b) Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

§ -45 Immunity from liability. (a) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

- (1) The commissioner or the commissioner's employees, agents, or representatives;
- (2) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;
- (3) A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees, or representatives;
- (4) Any regulatory body or their employees, agents, or representatives, overseeing life insurance, life settlements, securities, or investment fraud;
- (5) The life insurer that issued the policy covering the life of the insured; or
- (6) The licensee and any agents, employees, or representatives.

(b) Subsection (a) shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that subsection (a) does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) A person identified in subsection (a) shall be entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(d) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person identified in subsection (a).

§ -46 Confidentiality. (a) The documents and evidence provided pursuant to section -45 or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(b) Subsection (a) does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

- (1) In administrative or judicial proceedings to enforce laws administered by the commissioner;
- (2) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts, or to the National Association of Insurance Commissioners; or
- (3) At the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

(c) Release of documents and evidence under subsection (b) does not abrogate or modify the privilege granted in subsection (a).

§ -47 Other law enforcement or regulatory authority. This chapter shall not:

- (1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;
- (2) Preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued thereunder;
- (3) Prevent or prohibit a person from voluntarily disclosing information concerning life settlement fraud to a law enforcement or regulatory agency other than the insurance division; or
- (4) Limit the powers granted elsewhere by the laws of this State to the commissioner or the insurance fraud investigations unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

§ -48 Life settlement anti-fraud initiatives. (a) Providers and brokers shall have in place anti-fraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective anti-fraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Anti-fraud initiatives shall include:

- (1) Fraud investigators, who may be provider or broker employees or independent contractors; and
- (2) An anti-fraud plan that shall be submitted to the commissioner. The anti-fraud plan shall include but not be limited to:
 - (A) A description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;
 - (B) A description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

- (C) A description of the plan for anti-fraud education and training of underwriters and other personnel; and
- (D) A description or chart outlining the organizational arrangement of the anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(b) Anti-fraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

§ -49 Injunctions; civil remedies; cease and desist. (a) In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule implementing this chapter, the commissioner may seek an injunction in a court of competent jurisdiction in the county in which the person resides or has a principal place of business and may apply for temporary and permanent orders that the commissioner determines necessary to restrain the person from further committing the violation.

(b) Any person damaged by the acts of another person in violation of this chapter or any rule implementing this chapter, may bring a civil action for damages against the person committing the violation in a court of competent jurisdiction.

(c) The commissioner may issue a cease and desist order upon a person who violates any provision of this chapter, any rule or order adopted by the commissioner, or any written agreement entered into with the commissioner, in accordance with chapter 91.

(d) When the commissioner finds that such an action presents an immediate danger to the public and requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order shall be effective immediately upon service of a copy of the order on the respondent and shall remain effective for ninety days. If the commissioner begins non-emergency cease and desist proceedings under subsection (a), the emergency cease and desist order shall remain effective, absent an order by an appellate court of competent jurisdiction pursuant to chapter 91. In the event of a wilful violation of this chapter, the trial court may award statutory damages in addition to actual damages in an additional amount up to three times the actual damage award. The provisions of this chapter may not be waived by agreement. No choice of law provision may be used to prevent the application of this chapter to any life settlement contract in which a party to the settlement is a resident of this State.

§ -50 Penalties. (a) The commissioner may levy a civil penalty not exceeding \$10,000 and the amount of the claim for each violation upon any person, including those persons and their employees licensed pursuant to this chapter, who is found to have committed a fraudulent life settlement act or violated any other provision of this chapter.

(b) The license of a person licensed under this chapter who commits a fraudulent life settlement act shall be revoked for a period of at least one year.

(c) The penalties under this chapter are cumulative and may be imposed in addition to any other penalties authorized by law.

§ -51 Unfair trade practices. A violation of this chapter shall be considered an unfair trade practice pursuant to section 480-2 and subject to the penalties under chapter 480.

§ -52 Conflict of laws. (a) If there is more than one owner of a single policy, and the owners are residents of different states, the life settlement contract shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured shall govern in the event that equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(b) A provider from this State who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts, shall be governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the provider shall give the owner notice that neither that state nor this State regulates the transaction upon which the owner is entering. For transactions in those states, however, the provider shall maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the insurance division.

(c) If there is a conflict in the laws that apply to an owner and a purchaser in any individual transaction, the laws of the state that apply to the owner shall take precedence and the provider shall comply with those laws.

§ -53 Authority to adopt rules. The commissioner may adopt rules to implement this chapter pursuant to chapter 91."

SECTION 2. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- "(a) The commissioner shall collect in advance the following fees:
- (1) Certificate of authority: Issuance \$1,800
 - (2) Organization of domestic insurers and affiliated corporations:
 - (A) Application and all other papers required for issuance of solicitation permit, filing \$3,000
 - (B) Issuance of solicitation permit \$300
 - (3) Producer's license:
 - (A) Issuance, regular license \$100
 - (B) Issuance, temporary license \$100
 - (4) Nonresident producer's license: Issuance \$150
 - (5) Independent adjuster's license: Issuance \$150
 - (6) Public adjuster's license: Issuance \$150
 - (7) Claims adjuster's limited license: Issuance \$150
 - (8) Independent bill reviewer's license:
 - Issuance \$160
 - (9) Limited producer's license: Issuance \$120
 - (10) Managing general agent's license: Issuance \$150
 - (11) Reinsurance intermediary's license:
 - Issuance \$150
 - (12) Surplus lines broker's license: Issuance \$300
 - (13) Service contract provider's registration:
 - Issuance \$150
 - (14) Approved course provider certificate:
 - Issuance \$200
 - (15) Approved continuing education course certificate:
 - Issuance \$60

- (16) Vehicle protection product warrantor's registration:
Issuance \$150
- (17) Criminal history record check; fingerprinting:
For each criminal history record check and
fingerprinting check, a fee to be established
by the commissioner.
- (18) Limited line motor vehicle rental company producer's
license: Issuance \$2,000
- (19) Legal service plan certificate of authority:
Issuance before July 1, 2014 \$1,000
Issuance on or after July 1, 2014 \$500
- (20) Life settlement provider's license:
Issuance before July 1, 2014 \$150
Issuance on or after July 1, 2014 \$75
- (21) Life settlement broker's license:
Issuance before July 1, 2014 \$150
Issuance on or after July 1, 2014 \$75
- ~~[(20)]~~ (22) Examination for license: For each examination, a fee to be es-
tablished by the commissioner.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) \$1,200 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$100 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) \$150 per year for all services (including extension of the license) for a regularly licensed nonresident producer;
- (4) \$90 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) \$90 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (6) \$90 per year for all services (including extension of the license) for a claims adjuster's limited license;
- (7) \$120 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (8) \$90 per year for all services (including extension of the license) for a producer's limited license;
- (9) \$150 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (10) \$150 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (11) \$90 per year for all services (including extension of the license) for a licensed surplus lines broker;
- (12) \$150 per year for all services (including renewal of registration) for a service contract provider;
- (13) \$130 per year for all services (including extension of the certificate) for an approved course provider;
- (14) \$40 per year for all services (including extension of the certificate) for an approved continuing education course;
- (15) \$150 per year for all services (including renewal of registration) for a vehicle protection product warrantor;
- (16) A fee to be established by the commissioner for each criminal his-
tory record check and fingerprinting;

- (17) \$1,200 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer;
- (18) \$1,000 per year for all services provided before July 1, 2014, (including extension of the certificate) for an authorized legal service plan; [and]
- (19) \$500 per year for all services provided on or after July 1, 2014, (including extension of the certificate) for an authorized legal service plan[-];
- (20) \$1,200 per year for all services (including extension of the license) for a regularly licensed life settlement provider; and
- (21) \$150 per year for all services (including extension of the license) for a regularly licensed life settlement broker.

The services referred to in paragraphs (1) to [(49)] (21) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2012; provided that the amendments made to section 431:7-101, Hawaii Revised Statutes, shall not be repealed when that section is reenacted on July 1, 2014, pursuant to section 7 of Act 59, Session Laws of Hawaii 2010, and the amendments relating to life settlement contracts made by section 4 of Act 81, Session Laws of Hawaii 2011, and section 8 of Act 186, Session Laws of Hawaii 2011, shall not apply.

(Approved July 6, 2012.)

ACT 257

S.B. NO. 3002

A Bill for an Act Relating to Real Estate Brokers and Salespersons.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

“§467-14 Revocation, suspension, and fine. In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following:

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent to do so of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempt-

- ing to collect commissions or other compensation for the licensee's services from both of the parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person other than the real estate salesperson's employer or the real estate broker with whom the real estate salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
 - (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the real estate salesperson's employer or the real estate broker with whom the real estate salesperson is associated;
 - (7) Failing, within a reasonable time, to account for any moneys belonging to others that may be in the possession or under the control of the licensee;
 - (8) Any other conduct constituting fraudulent or dishonest dealings;
 - (9) When the licensee, being a partnership, permits any member of the partnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
 - (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
 - (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
 - (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the real estate broker represents;
 - (13) Violating this chapter; chapter 484, 514A, 514B, 514E, or 515; section 516-71; or the rules adopted pursuant thereto;
 - (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a real estate broker may pay a commission to:
 - (A) A licensed real estate broker of another state, territory, or possession of the United States if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid;
 - (B) A real estate broker lawfully engaged in real estate brokerage activity under the laws of a foreign country if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid; or
 - (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of a transient vacation rental; provided that for purposes of this paragraph, "travel agency" means any person that, for com-

pensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;

- (15) Commingling the money or other property of the licensee's principal with the licensee's own;
- (16) Converting other people's moneys to the licensee's own use;
- (17) The licensee is adjudicated insane or incompetent;
- (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact;
- (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee;
- (20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing; or
- (21) Acquiring an ownership interest, directly or indirectly, or by means of a subsidiary or affiliate, in any distressed property that is listed with the licensee or within three hundred sixty-five days after the licensee's listing agreement for the distressed property has expired or is terminated.

For the purposes of paragraphs (1) and (18), the real estate commission shall consider whether the licensee relied in good faith on information provided by other persons or third parties.

As used in this section, "distressed property" has the same meaning as set forth in section 480E-2.

Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or real estate salesperson, or on the licensee's own behalf."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

ACT 258

S.B. NO. 2769

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part I of article 14 to be appropriately designated and to read as follows:

"§431:14- Publication of homeowners insurance premium information.

(a) Upon the commissioner's request, all homeowners insurers shall provide

homeowners insurance premium information to the commissioner within thirty days of the request.

(b) The commissioner shall publish annually, by electronic or online publication on the official website of the insurance division, a list of all homeowners insurers with representative annual premiums for homeowners insurance.

(c) As used in this section:

“Homeowners insurance” means an insurance policy for any residential property in the State that combines:

- (1) Indemnity from destruction or damage of the insured’s property by various designated perils; and
- (2) Indemnity for legal liability of the insured for death, injury, or disability of any human being or for damage to property.

“Homeowners insurer” means an insurer holding a valid certificate of authority to engage in the business of making contracts of homeowners insurance in this State.”

SECTION 2. Section 431:10C-210, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-210 Publication of premium [rates-] information. (a) Upon the commissioner’s request, all motor vehicle insurers shall provide motor vehicle insurance premium information to the commissioner within thirty days of the request.

(b) The commissioner shall publish annually, ~~[in a newspaper of general circulation in the State, notice of availability of]~~ by electronic or online publication on the official website of the insurance division, a list of all motor vehicle insurers with representative annual premiums for motor vehicle insurance. The commissioner shall have information on premiums for motor vehicle insurance, which shall be available to the public on request.”

SECTION 3. Section 431:14-103.3, Hawaii Revised Statutes, is amended to read as follows:

“[§§431:14-103.3 Rate adjustment mandates.] (a) Except as otherwise provided by law, the commissioner may mandate insurers to submit new filings for any type of insurance under section 431:14-102 when the commissioner has actuarially sound information that current rates may be excessive, inadequate, or unfairly discriminatory.

(b) Insurers shall submit the new rate filings within one hundred twenty days of the commissioner’s mandate.

(c) The new rate filings shall be subject to the rate filing requirements under section 431:14-104.

(d) After the commissioner reviews the new rate filings submitted under this section, if the commissioner finds that the rates are excessive, inadequate, or unfairly discriminatory, the commissioner may adjust the rates for any class of insurance for any insurer pursuant to subsections (e) and (f).

(e) If, any time subsequent to the applicable review period provided for in sections 431:14-104 and 431:14-120, the commissioner does not approve a new rate filing by an insurer, the commissioner shall issue a written notice of disapproval of the filed rate to the insurer. The written notice shall set forth the commissioner’s proposed rate and the actuarial, statutory, factual, and legal bases for both the disapproval of the rate filed by the insurer and the commissioner’s proposed rate. Within thirty days of the commissioner’s written notice of disap-

proval, the insurer may file a written request to the commissioner for a hearing pursuant to subsection (f); provided that:

- (1) If the insurer fails to file a written request for hearing, the commissioner's proposed rate shall become effective sixty days after the expiration of the deadline to file a written request for a hearing; and
- (2) If the insurer files a written request for a hearing, the existing effective rate shall remain in effect until sixty days after the final order is rendered by the director of commerce and consumer affairs and the appeals process has been exhausted.

(f) The hearing allowed under subsection (e) shall be conducted under the following procedure:

- (1) The hearing shall commence within twenty days of receipt of the written demand for a hearing, and written notice of the hearing shall be provided to the parties not less than ten days prior to the hearing;
- (2) The commissioner shall present the commissioner's proposed rate and the insurer shall present its rate filing, in addition to other relevant evidence;
- (3) Within fifteen days after the conclusion of the hearing, the hearings officer shall issue a proposed decision; and
- (4) The rate found to be in compliance with this article shall be effective sixty days after the final order is rendered by the director of commerce and consumer affairs and the appeals process has been exhausted."

SECTION 4. Section 431:14-104, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (f) and (g) to read:

"(f) Specific inland marine rates on risks specially rated, made by a rating organization[-] or advisory organization, shall be filed with the commissioner.

(g) An insurer may satisfy its obligation to make the filings by becoming a member of, or a subscriber to, a licensed rating organization [which] or advisory organization that makes the filings, except for those lines of insurance for which the commissioner determines individual insurer rate filings shall be made. Nothing contained in this article shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization[-] or advisory organization."

2. By amending subsections (j), (k), and (l) to read:

"(j) Except as provided herein and in subsections (k) and (l) and section 431:14-120, each filing shall be on file for a waiting period of thirty days before the filing becomes effective. The period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the insurer, rating organization, or advisory organization that made the filing that the commissioner needs the additional time for the consideration of the filing. Upon the written application by the insurer, rating organization, or advisory organization, the commissioner may authorize a filing [which] that the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner, as provided in section 431:14-106, within the waiting period or any extension thereof.

- (k) The following rates shall become effective when filed:

- (1) Specific inland marine rates on risks specially rated by a rating organization[-] or advisory organization;

- (2) Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order or rule of a public body, not covered by a previous filing; and
- (3) Any special filing with respect to any class of insurance, subdivision, or combination thereof ~~[which] that~~ is subject to individual risk premium modification and has been agreed to by an insured under a formal or informal bid process.

The rates shall be deemed to meet the requirements of this article until the time the commissioner reviews the filing and so long as the filing remains in effect.

(1) The commissioner, by written order, may suspend or modify the requirement of filing as to any class of insurance, subdivision, or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. The orders shall be made known to the affected insurers ~~[and], rating organizations[-], and advisory organizations.~~ The commissioner may make examinations as the commissioner may deem advisable to ascertain whether any rates affected by the order meet the standards set forth in section 431:14-103(a)(1)."

SECTION 5. Section 431:14-106, Hawaii Revised Statutes, is amended to read as follows:

"§431:14-106 Disapproval of filings. (a) If, within the waiting period or any extension of the waiting period as provided in section 431:14-104(j), the commissioner finds that a filing does not meet the requirements of this article, the commissioner shall send to the insurer, rating organization, or advisory organization ~~[which] that~~ made the filing, written notice of disapproval of the filing specifying in what respects the filing fails to meet the requirements of this article, specifying the actuarial, statutory, factual, and legal bases for the disapproval, including an explanation of the application thereof that resulted in disapproval, and stating that the filing shall not become effective.

(b) If, within thirty days:

- (1) After a specific inland marine rate on a risk specially rated by a rating organization or advisory organization subject to section 431:14-104(k) has become effective; or
- (2) After a special surety or guaranty filing subject to section 431:14-104(k) has become effective;

the commissioner finds that ~~[such] the~~ filing does not meet the requirements of this article, the commissioner shall send to the insurer, rating organization, or advisory organization that made the filing, written notice of disapproval of the filing specifying in what respects the filing fails to meet the requirements of this article and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice.

(c) If, any time subsequent to the applicable review period provided for in subsections (a) or (b), the commissioner finds that a filing does not comply with the requirements of this article, the commissioner shall order a hearing upon the filing. The hearing shall be held upon not less than ten days' written notice to every insurer ~~[and], rating organization [who], or advisory organization~~ that made [such] the filing. The notice shall specify the matters to be considered at the hearing~~[-]~~ and specify the actuarial, statutory, factual, and legal bases for the commissioner's finding of noncompliance. If, after a hearing, the commissioner finds that a filing does not meet the requirements of this article, the commissioner, within thirty days of the hearing, shall issue an order specifying in what respects the filing fails to meet ~~[such] the~~ requirements, and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective.

tive. Copies of the order shall be sent to every such insurer ~~[and], rating organization[-], or advisory organization whose filing is affected by the order.~~ The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(d) If a filing is disapproved, in whole or in part, a written request for a hearing may be filed pursuant to section 431:14-118. The insurer shall bear the burden of proving that the filing meets the requirements of this article.

~~[(d) (1)]~~ (e) Any person or organization aggrieved with respect to any filing [which] that is in effect may make written demand to the commissioner for a hearing thereon; provided[, however, that the] that:

- (1) The insurer [or], rating organization [which], or advisory organization that made the filing shall not be authorized to proceed under this subsection[-];
- (2) The demand shall specify the grounds to be relied upon by the aggrieved person or organization, and [such] the demand [must] shall show that [such] the person or organization has a specific economic interest affected by the filing[-];
- (3) If the commissioner finds that the demand is made in good faith, that the applicant would be so aggrieved if the person's or organization's grounds are established, and that the grounds otherwise justify [such] a hearing, the commissioner [shall], within thirty days after receipt of the demand, shall hold a hearing. The hearing shall be held upon not less than ten days' written notice to the aggrieved party and to every insurer [and], rating organization [which], or advisory organization that made [such] the filing. The aggrieved party shall bear the burden of proving that the filing fails to meet the standards set forth in section 431:14-103(a)(1); and
- (4) If, after the hearing, the commissioner finds that the filing does not meet the requirements of this article, the commissioner shall issue an order specifying in what respects the filing fails to meet the requirements of this article, and stating when, within a reasonable period, the filing shall be deemed no longer effective. Copies of the order shall be sent to the applicant and to every such insurer [and], rating organization[-], or advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

~~[(e)]~~ (f) No manual of classifications, rules, rating plan, or any modification of any of the foregoing [which] that establishes standards for measuring variations in hazards or expense provisions, or both, and [which] that has been filed pursuant to the requirements of section 431:14-104 shall be disapproved if the rates thereby produced meet the requirements of this article.

~~[(f)]~~ (g) The notices, hearings, orders, and appeals referred to in this section are in all applicable respects subject to chapter 91, unless expressly provided otherwise."

SECTION 6. Section 431:10C-209.5, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Reporting Requirements for Telecommunications and Cable Television Providers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The governor's creation of the Hawaii broadband initiative boldly states that advanced broadband capability is an essential piece of infrastructure necessary to drive innovation, the economy, and job creation in the twenty-first century. High-speed broadband infrastructure and affordable broadband services are essential for the advancement of education, health services, public safety, research, innovation, e-government services, economic development, and public safety. The telecommunications industry is an essential element of Hawaii's economy and vital to the health and welfare of the people of Hawaii.

Implementation of the Hawaii broadband initiative requires statistical data for accurate and timely analyses. The data will also assist in assessments and evaluations of available broadband infrastructure and services. Such analyses will also aid in the development of initiatives related to the future expansion and enhancement of broadband infrastructure and services.

In January 2010, the United States Department of Commerce's National Telecommunications and Information Administration awarded the State of Hawaii a broadband data and development grant, number 15-50-M09057, to create and maintain a broadband map illustrating available broadband services throughout the State. In addition to the mapping, other grant activities included an analysis of broadband availability and adoption; identification of services at public schools, libraries, hospitals, colleges, universities, and public buildings (referred to as community anchor institutions); and the development of a five-year plan and a roadmap to increase access and adoption through legislation and local technical assistance.

In particular, the federal grant required broadband data to be aggregated at the census-block level. Due to this requirement, if any subscriber in a census block is able to receive broadband service from a provider, that entire census block is deemed to be served by that provider. The legislature finds that reporting on a census-block basis in this manner may result in an inaccurate assessment or overrepresentation of broadband availability within the State.

Broadband data collected from and submitted by providers can and should be compiled at a more granular level. Reporting broadband data as a percentage of households, addresses, or tax map key parcels in a census-block that cannot be serviced will provide increased detail of broadband penetration and availability and will more accurately depict the locations and status of broadband access in the rural areas of Hawaii.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
TELECOMMUNICATIONS AND CABLE INDUSTRY INFORMATION
REPORTING**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Broadband access or broadband service” means an “always-on” service that includes but is not limited to computer processing capabilities, information

provision, and computing interactivity with data transport, enabling end users to access the Internet and use a variety of applications at minimum speeds established by the Federal Communications Commission.

“Broadband infrastructure” means the medium used to provide broadband access or broadband service, including fiber optic cable, copper cable, coaxial cable, and wireless media, such as satellite communications, wi-fi, and worldwide interoperability for microwave access.

“Broadband speed threshold” means the highest speed threshold defined or established in the most recent broadband progress report issued by the Federal Communications Commission to Congress.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Mapping information” means the information required under the United States Department of Commerce’s National Telecommunications and Information Administration broadband data and development grant, number 15-50-M09057.

“Provider” means any cable operator, telecommunications carrier, or telecommunications common carrier that provides broadband service.

§ -2 Informational reports. (a) Beginning on March 1, 2013, and on every March 1 thereafter, every provider, except for commercial mobile radio service providers, shall file with the department, in a form as prescribed by the director, separate reports for each county that include, over the most recent thirty-day period and without any other personal or private information, the following:

- (1) Broadband access availability aggregated at the census-block level and detailed as a percentage of households, addresses, or tax map key parcels that cannot be serviced in a census-block at the broadband speed threshold; and
- (2) The monthly price charged for the broadband service if purchased individually without any discounts.

(b) Beginning on March 1, 2013, and on every March 1 thereafter, commercial mobile radio service providers shall file with the department data and information that is the same as and not inconsistent with information filed with the Federal Communications Commission.

§ -3 Confidential information. (a) Notwithstanding chapter 92F, statements and reports provided to the department pursuant to section -2, and the data contained therein, shall be kept confidential; provided that the department may disclose mapping information and data aggregated to the extent necessary in the director’s discretion to prevent identification of a provider with the specific data furnished by that provider.

(b) Unless otherwise provided by law, the department shall be prohibited from:

- (1) Using the information furnished or obtained for any purpose other than the purposes for which it is supplied; and
 - (2) Making any publication whereby the data furnished by any person can be identified.
- (c) The department shall:
- (1) Ensure the security and confidentiality of the information;
 - (2) Protect against any anticipated threats or hazards to the security or integrity of the information; and

- (3) Protect against unauthorized access to or use of the information that could result in personal or competitive harm to individuals or providers.”

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 260

S.B. NO. 2412

A Bill for an Act Relating to Contracts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 291, Session Laws of Hawaii 2006, addressed the problem of delayed payments to subcontractors and materialmen on government projects by providing for the prompt payment of subcontractors and materialmen upon the completion of their work or furnishing of materials on government projects. However, the legislature finds that some subcontractors and materialmen are still experiencing delays in payment and that further action is needed to ensure that subcontractors and materialmen obtain timely payment upon the completion of their work on projects in the private sector.

To address some of the concerns raised by subcontractors and materialmen in private-sector projects, this Act requires subcontractors to be paid within ten days of the contractor's receiving payment from the owner in private-sector projects, if the subcontractor's work is found to be complete in accordance with the terms of the subcontract and in the absence of a bona fide dispute between the subcontractor and the contractor concerning the goods or services contracted for.

The purpose of this Act is to address some of the concerns regarding the payment of subcontractors and materialmen on nongovernment projects.

SECTION 2. Section 444-25, Hawaii Revised Statutes, is amended to read as follows:

“§444-25 Payment for goods and services. A contractor shall pay the contractor's subcontractor for any goods and services rendered within ~~[sixty]~~ ten days after receipt of ~~[a proper statement]~~ an invoice by the subcontractor that ~~[the goods have been delivered or services have been performed.]~~ includes any supporting documents as required by the terms of the subcontract and after receipt by the contractor of payment from the owner for the subcontractor's work, whichever occurs later. The subcontractor shall be entitled to receive interest on the unpaid ~~[principal]~~ amount at the rate of one and one-half per cent per month ~~[commencing on the sixtieth day following receipt of the statement by the contractor.]~~ from the date payment is due; provided that this section shall not apply if the delay in payment is due to a bona fide dispute between the contractor and the subcontractor concerning the goods and services contracted for. ~~[If there is no bona fide dispute between the subcontractor and the contractor concerning the goods or services contracted for, the subcontractor shall be entitled to payment for goods and services under this section.]~~

If payment is contingent upon receipt of funds held in escrow or trust, the contractor shall clearly state this fact in the contractor's solicitation of bids. If the solicitation for bids contains the statement that the time of payment is contingent upon the receipt of funds held in escrow or trust and a contract is

awarded in response to the solicitation, interest ~~[will]~~ shall not begin to accrue upon any unpaid balance until after the [sixtieth] tenth day following receipt by the contractor of [the subcontractor's statement or the thirtieth day following] an invoice by the subcontractor that includes any supporting documents as required by the terms of the subcontract and receipt of the escrow or trust funds, whichever occurs later[-]; provided that this section shall not apply if the delay in payment is due to a bona fide dispute between the subcontractor and the contractor concerning the goods and services contracted for.

This section shall not apply to chapter 103 or any section affecting public contracts."

SECTION 3. This Act shall not apply to the payment terms of previously binding written private contracts entered into, construction bids opened, or request for proposals solicited prior to July 1, 2012.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 261

H.B. NO. 2574

A Bill for an Act Relating to Notification of Chapter 91 Hearings.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 371-4, Hawaii Revised Statutes, is amended to read as follows:

"§371-4 Labor and industrial relations appeals board. (a) There is created a labor and industrial relations appeals board composed of three members nominated and, by and with the advice and consent of the senate, appointed by the governor for terms of ten years each, except that the terms of members first appointed shall be for six, eight, and ten years respectively as designated by the governor at the time of appointments. The governor shall designate the chairperson of the board, who shall be an attorney at law licensed to practice in all of the courts of this State. Each member shall hold office until the member's successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper handling of appeals under workers' compensation law and other labor laws, it is hereby declared to be in the public interest to continue board members in office as long as efficiency is demonstrated. The members shall devote full time to their duties as members of the board. Effective July 1, 2005, the chairperson of the board shall be paid a salary set at eighty-seven per cent of the salary of the director of labor and industrial relations, and the salary of each of the other members shall be ninety-five per cent of the chairperson's salary.

(b) The board shall have power to decide appeals from decisions and orders of the director of labor and industrial relations issued under the workers'

compensation law and any other law for which an appeal to the board is provided by law.

(c) For purposes of appeals to the board conducted pursuant to chapter 91, notwithstanding section 91-9.5, all parties shall be given written notice of hearing by first class mail at least fifteen days before the hearing.

(d) Unless otherwise provided by law, if service by first class mail is not made because the board or its agents have been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by publication at least once in each of two successive weeks in a newspaper of general circulation. The last published notice shall appear at least fifteen days prior to the date of the hearing.

~~[(e)]~~ (e) A decision concurred in by any two members shall constitute a decision of the board.

~~[(d)]~~ (f) A vacancy in the board, if there remain two members of it, shall not impair the authority of two members to act.

~~[(e)]~~ (g) If any member of the board is unable to act because of absence, temporary disability, or disqualification, the governor may make a temporary appointment and the appointee shall have all the powers and duties of a regular member of the board.

~~[(f)]~~ (h) The chairperson of the appeal board shall be responsible for the administrative functions of the appeal board. The appeal board may:

- (1) Appoint an executive officer and hearings officer, and employ other employees as it deems necessary in the performance of its functions;
- (2) Set the duties and compensation of the executive officer, hearings officer, and employees; and
- (3) Provide for the reimbursement of actual and necessary expenses incurred by the executive officer, hearings officer, and employees in the performance of their duties, within the amounts made available by appropriations therefor.

Members of the appeal board and employees other than clerical and stenographic employees shall be exempt from chapters 76 and 89. Clerical and stenographic employees shall be employed in accordance with chapter 76.

~~[(g)]~~ (i) The board shall be within the department of labor and industrial relations for budgetary and administrative purposes only.

~~[(h)]~~ (j) The board may adopt rules and regulations within its area of responsibilities in accordance with chapter 91."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

ACT 262

H.B. NO. 2584

A Bill for an Act Relating to Notice of Workers' Compensation Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 386-122, Hawaii Revised Statutes, is amended to read as follows:

“§386-122 Notice of insurance. If the insurance so effected is under section 386-121(a)(1), the employer shall file with the director in a form prescribed by the director a notice of the employer’s insurance together with a statement of benefits provided by the policy of insurance. The director may also accept the notice of employer’s insurance from approved third party agencies in a manner and form approved by the director.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

ACT 263

H.B. NO. 2264

A Bill for an Act Relating to Employment Security.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 383-66, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department, for the nine-month period April 1, 1941, to December 31, 1941, and for each calendar year thereafter, except as otherwise provided in this part, shall classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts with a view to fixing the contribution rates to reflect this experience. The department shall determine the contribution rate of each employer in accordance with the following requirements:

- (1) The standard rate of contributions payable by each employer for any calendar year through 1984 shall be three per cent. For ~~the~~ calendar ~~[year]~~ years 1985 and thereafter, the standard rate of contributions payable by each employer shall be five and four-tenths per cent;
- (2) No employer’s rate for the calendar year 1942 and for any calendar year thereafter shall be other than the maximum rate unless and until the employer’s account has been chargeable with benefits throughout the thirty-six consecutive calendar month period ending on December 31 of the preceding calendar year, except that, for the calendar year 1956 and for each calendar year thereafter, an employer who has not been subject to the law for a sufficient period to meet this requirement may qualify for a rate other than the maximum rate if the employer’s account has been chargeable throughout a lesser period but in no event less than the twelve consecutive calendar month period ending on December 31 of the preceding calendar year. For the calendar years 1985 through 1991, the contribution rate for a new or newly covered employer shall be the sum of the employer’s basic contribution rate of three and six-tenths per cent and the fund solvency contribution rate determined for that year pursuant to section 383-68(a), until the employer’s account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on December 31 of the preceding calendar year; except that no employer’s contribution rate shall be greater than five and four-tenths per cent and no employer with a negative reserve ratio shall have a contribution rate less than the employer’s

basic contribution rate. For calendar years 1992 and thereafter, the contribution rate for a new or newly covered employer shall be the contribution rate assigned to any employer with .0000 reserve ratio, until the employer's account has been chargeable with benefits throughout the twelve consecutive calendar month period ending on December 31 of the preceding calendar year;

- (3) Any amount credited to this State under section 903 of the Social Security Act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund, shall be excluded from the fund for the purposes of this paragraph. Any advance that may be made to this State under section 1201 of the Social Security Act, whether or not withdrawn from this trust fund, shall be excluded from the fund for the purposes of this paragraph. No employer's rate shall be reduced in any amount that is not allowable as an additional credit, against the tax levied by the federal Unemployment Tax Act pursuant to section 3302(b) of the federal Internal Revenue Code or pursuant to any other federal statute, successor to section 3302(b), which provides for the additional credit now provided for in section 3302(b);
- (4) If, when any classification of employers is to be made (which may be after the commencement of the period for which the classification is to be made), the department finds that any employer has failed to file any report required in connection therewith or has filed a report that the department finds incorrect or insufficient, the department shall notify the employer thereof by mail addressed to the employer's last known address. Unless the employer files the report or a corrected or sufficient report, as the case may be, within fifteen days after the mailing of the notice, the maximum rate of contributions shall be payable by the employer for the period for which the contribution rate is to be fixed. Effective January 1, 1987, the director, for excusable failure, may redetermine the assignment of the maximum contribution rate in accordance with this section, provided the employer files all reports as required by the department and submits a written request for redetermination before December 31 of the year for which the contribution rate is to be fixed;
- (5) For the purpose of sections 383-63 to 383-69, if after December 31, 1939, any employing unit in any manner succeeds to or acquires the organization, trade, or business, or substantially all the assets thereof (whether or not the successor or acquiring unit was an "employing unit", as that term is defined in section 383-1 prior to the acquisition), or after December 31, 1988 and prior to December 31, 1992, acquires a clearly identifiable and segregable portion of the organization, trade, or business of another that at the time of the acquisition was an employer subject to this chapter, and the successor continues or resumes the organization, trade, or business and continues to employ all or nearly all of the predecessor's employees, or the successor continues or resumes the clearly identifiable and segregable portion of the organization, trade, or business and continues to employ all or nearly all of the employees of the clearly identifiable and segregable portion, an application may be made for transfer of the predecessor's experience record. If the predecessor employer has submitted all information and reports required by the department including amended quarterly wage reports identifying the employees transferred or retained and executed and filed with

the department before December 31 of the calendar year following the calendar year in which the acquisition occurred on a form approved by the department a waiver relinquishing the rights to all or the clearly identifiable and segregable portion of the predecessor's prior experience record with respect to its separate account, actual contribution payment, and benefit chargeability experience, annual payrolls and other data for the purpose of obtaining a reduced rate, and requesting the department to permit the experience record to inure to the benefit of the successor employing unit upon request of the successor employing unit, the experience record for rate computation purposes of the predecessor shall thereupon be deemed the experience record of the successor and the experience record shall be transferred by the department to the successor employing unit and shall become the separate account of the employing unit as of the date of the acquisition. Benefits chargeable to the predecessor employer or successor employer in case of an acquisition of a clearly identifiable and segregable portion of the organization, trade, or business, after the date of acquisition on account of employment prior to the date of the acquisition shall be charged to the separate account of the successor employing unit. In case of an acquisition of a clearly identifiable and segregable portion of the organization, trade, or business, the experience record that inures to the benefit of the successor employer shall be determined as follows:

- (A) Wages, as used in section 383-61, attributable to the clearly identifiable and segregable portion shall be for the period beginning with the most recent three consecutive calendar years immediately preceding the determination of rates under sections 383-63 to 383-69 and through the date of acquisition; and
- (B) Reserve balance attributable to the clearly identifiable and segregable portion shall be the amount determined by dividing the wages, as used in section 383-61, of the clearly identifiable and segregable portion in the three calendar years (or that lesser period as the clearly identifiable and segregable portion may have been in operation) immediately preceding the computation date of the rating period prior to which the acquisition occurred by the total taxable payrolls of the predecessor for the three-year period (or that lesser period as the clearly identifiable and segregable portion may have been in operation) and multiplying the quotient by the reserve balance of the predecessor employer calculated as of the acquisition date;

provided the waiver or waivers required herein are filed with the department within sixty days after the date of acquisition, the successor employing unit, unless already an employer subject to this chapter, shall be subject from the date of acquisition to the rate of contribution of the predecessor or of two or more predecessors if they have the same contribution rate. If there are two or more predecessors having different contribution rates, the successor shall be subject to the rate prescribed for new or newly covered employers under paragraph (2) until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessors and successor shall be combined and shall be deemed to be the experience record of a single employing unit and the successor's rate shall thereupon be determined upon the basis of the

combined experience. If the successor at the time of the transfer is an employer subject to this chapter, the rate of contribution to which the successor is then subject shall remain the same until the next determination of rates under sections 383-63 to 383-69, at which time the experience records of the predecessor and successor shall be combined and shall be deemed to be the experience record of a single employing unit and the successor's rate shall thereupon be determined upon the basis of the combined experience. For the purpose of determination of rates under sections 383-63 to 383-69 of all successor employing units, waivers as required herein, if not previously filed as hereinabove provided, shall be filed with the department not later than March 1 of the year for which the rate is determined; provided that no waiver shall be accepted by the department for filing unless the employing unit executing the waiver has filed all reports and paid all contributions required by this chapter;

- (6) The department may prescribe rules for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and, in accordance with the rules and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, shall maintain the joint account as if it constituted a single employer's account. The rules shall be consistent with the federal requirements for additional credit allowance in section 3303 of the federal Internal Revenue Code and consistent with this chapter;
- (7) Whenever there is an amendment to this chapter which, if immediately effective, would change an employer's rate of contributions, the rate of the employer shall be changed in accordance with the amendment and the new rate shall apply for the remainder of the calendar year beginning with the calendar quarter immediately following the effective date of the amendment providing for the change, unless otherwise provided by the amendment;
- (8) For the purposes of this section, "contribution rate" shall mean the basic contribution rate as defined in section 383-68 when applied to calendar year 1978 or any calendar year thereafter; and
- (9) For the purposes of this section, the terms "employing unit", "employer", "predecessor", and "successor" shall include both the singular and the plural of each term. Nothing in this section shall prevent two or more successor employing units, which each succeed to or acquire a clearly identifiable and segregable portion of a predecessor employing unit, from gaining the benefit of the clearly identifiable and segregable portion of the predecessor's experience record;

provided that the terms of this section are complied with, nothing herein shall bar a predecessor employer from waiving the rights to all or the clearly identifiable and segregable portion of the predecessor's prior experience record in favor of a successor employer where the successor acquired a clearly identifiable and segregable portion of the predecessor's organization, trade, or business after December 31, 1988 and prior to December 31, 1992."

SECTION 2. Section 383-68, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Subject to the requirements of [section] sections 383-63 to 383-69, an employer's contribution rate for calendar year 1992 and for each calendar year thereafter shall be that rate which appears on the same line as the employ-

er's reserve ratio for that year in the contribution rate schedule applicable for the year as specified in subsection (c).

CONTRIBUTION RATE SCHEDULES (rates in percentages)

Reserve Ratio	A	B	C	D	E	F	G	H
.1500 and over	0.0	0.0	0.0	0.2	0.6	1.2	1.8	2.4
.1400 to .1499	0.0	0.0	0.1	0.4	0.8	1.4	2.0	2.6
.1300 to .1399	0.0	0.0	0.2	0.6	1.0	1.6	2.2	2.8
.1200 to .1299	0.0	0.1	0.4	0.8	1.2	1.8	2.4	3.0
.1100 to .1199	0.0	0.2	0.6	1.0	1.4	2.0	2.6	3.2
.1000 to .1099	0.1	0.3	0.8	1.2	1.6	2.2	2.8	3.4
.0900 to .0999	0.3	0.5	1.0	1.4	1.8	2.4	3.0	3.6
.0800 to .0899	0.5	0.7	1.2	1.6	2.0	2.6	3.2	3.8
.0700 to .0799	0.7	0.9	1.4	1.8	2.2	2.8	3.4	4.0
.0600 to .0699	0.9	1.1	1.6	2.0	2.4	3.0	3.6	4.2
.0500 to .0599	1.1	1.3	1.8	2.2	2.6	3.2	3.8	4.4
.0300 to .0499	1.3	1.5	2.0	2.6	3.0	3.6	4.2	4.8
.0000 to .0299	1.7	1.9	2.4	3.0	3.4	4.0	4.6	5.2
-.0000 to -.0499	2.1	2.3	2.8	3.4	3.8	4.4	5.0	5.4
-.0500 to -.0999	2.5	2.7	3.2	4.0	4.4	5.0	5.4	[5.4] <u>5.6</u>
-.1000 to -.4999	2.9	3.1	3.6	4.6	5.0	5.4	[5.4] <u>5.6</u>	[5.4] <u>5.8</u>
-.5000 to -.9999	3.4	3.6	4.2	5.2	5.4	[5.4] <u>5.6</u>	[5.4] <u>5.8</u>	[5.4] <u>6.0</u>
-1.0000 to -1.4999	4.1	4.2	4.8	5.4	[5.4] <u>5.6</u>	[5.4] <u>5.8</u>	[5.4] <u>6.0</u>	[5.4] <u>6.2</u>
-1.5000 to -1.9999	4.7	4.8	5.4	[5.4] <u>5.6</u>	[5.4] <u>5.8</u>	[5.4] <u>6.0</u>	[5.4] <u>6.2</u>	[5.4] <u>6.4</u>
-2.0000 and less	5.4	5.4	[5.4] <u>5.6</u>	[5.4] <u>5.8</u>	[5.4] <u>6.0</u>	[5.4] <u>6.2</u>	[5.4] <u>6.4</u>	[5.4] <u>6.6</u>

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 2013.

(Approved July 6, 2012.)

ACT 264

S.B. NO. 2261

A Bill for an Act Relating to The Weed And Seed Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that weed and seed is a program administered by the United States Attorney's Office in partnership with the Young Men's Christian Association of Honolulu. Initiated in the country in 1991, weed and seed is a comprehensive multi-agency approach to law enforcement, crime

prevention, and community revitalization. Although no longer funded by the United States Department of Justice, weed and seed is a recognized "brand name" in Hawaii, having been in existence since 1998. The legislature finds that it is a robust program, doing substantial good in our communities.

The weed and seed program is a collaborative effort among law enforcement agencies at the federal, state, and county levels; social service agencies; private businesses; faith-based organizations; the public sector, including city, state, and federal departments; schools; nonprofit organizations; and residents to reclaim, restore, and rebuild communities. The four key elements of the weed and seed program are:

- (1) Law enforcement;
- (2) Community policing;
- (3) Prevention, intervention, and treatment programs; and
- (4) Neighborhood restoration.

The weed and seed program works with local law enforcement to prevent, control, and reduce violent crime, drug abuse, and gang activity in targeted neighborhoods by "weeding" out the criminal element in the community. Community policing involves having police officers work closely with community residents to develop solutions to violent and drug-related crimes. "Seeding" the community involves collaboration among various human services organizations to implement prevention, intervention and treatment, and neighborhood revitalization projects, programs, and activities.

The legislature also finds that the State has benefited greatly from weed and seed, based on programs at sites on Oahu that encompass Kalihi-Palama, Chinatown, Downtown Honolulu, Ala Moana, Sheridan, McCully, Waipahu, and Ewa Beach. Since the implementation of the program, crime in those areas has decreased significantly. The legislature further finds that the program's success warrants the continued operation of weed and seed in these communities, and envisions expanding it to other communities in the future.

The purpose of this Act is to appropriate funds to maintain current operations of the weed and seed program.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$336,000 or so much thereof as may be necessary for fiscal year 2012-2013 to maintain the current operation of the weed and seed program in areas currently designated for the weed and seed program.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 265

H.B. NO. 2564

A Bill for an Act Relating to Volunteer Medical Assistance Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 321-2.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This section shall apply to all volunteer medical assistance personnel, including:

- (1) Physicians;

- (2) Psychologists;
- (3) Nurses;
- (4) Emergency medical technicians;
- (5) Social workers;
- (6) Mobile intensive care technicians; ~~and~~
- (7) Physician assistants~~;~~; and
- (8) Pharmacists.

licensed or certified in this State, or employed by a health care facility, while providing volunteer medical assistance services.”

SECTION 2. Section 321-23.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All volunteer emergency medical disaster response personnel including:

- (1) Physicians;
- (2) Psychologists;
- (3) Nurses;
- (4) Emergency medical technicians;
- (5) Social workers;
- (6) Mobile intensive care technicians; ~~and~~
- (7) Physician assistants; and
- (8) Pharmacists.

licensed in the State, or employed by a health care facility, while engaged in the emergency response to a mass casualty event or disaster condition, including participation during periods of mass casualty and disaster management training, shall be deemed state employees or county employees, as the case may be, and shall have the powers, duties, rights, and privileges of such in the performance of their duties as prescribed by or under the authority of the governor or a county.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

ACT 266

H.B. NO. 2776

A Bill for an Act Relating to Liability Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- **Liability insurance.** (a) All operators of adult foster homes under section 321-11.2 and adult residential care homes, assisted living facilities, and expanded adult residential care homes as defined in section 321-15.1 shall obtain and maintain liability insurance with respect to their operation of the homes or facilities in a coverage amount deemed sufficient by the department.

This section shall not apply to operators of adult foster homes, adult residential care homes, assisted living facilities, and expanded adult residential care homes that:

- (1) Are operating under a contract with the department of human services or the department of health; and
 - (2) Are in compliance with the liability insurance coverage requirements of that contract.
- (b) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 267

H.B. NO. 2569

A Bill for an Act Relating to Civil Unions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 1, Session Laws of Hawaii 2011, gave civil union partners all the same rights, benefits, protections, and responsibilities under law as those who contract, obtain a license, and are solemnized pursuant to chapter 572, Hawaii Revised Statutes. During the months of preparation to implement Act 1 and in the time since Act 1 became effective on January 1, 2012, however, it has become clear that certain provisions of the civil unions law would benefit from additional clarification to minimize confusion and aid in the proper implementation of Act 1. Therefore, in making these amendments with this Act, it is the legislature’s intent to reconfirm and clarify the provisions of chapter 572B, Hawaii Revised Statutes, as enacted by Act 1, Session Laws of Hawaii 2011. Nothing in this Act shall be interpreted to weaken, lessen, expand, or enlarge any of the protections, obligations, rights, and responsibilities governed by any provision of Act 1.

SECTION 2. Chapter 509, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§509- Tenancy by the entirety when owners change relationship status.

(a) When two individuals who hold property as tenants by the entirety enter into a different legal relationship with each other that also allows them to hold property as tenants by the entirety, their ownership as tenants by the entirety shall be continuous:

- (1) If the new legal relationship is entered into simultaneously with the termination of the earlier legal relationship; or
- (2) If the new legal relationship is entered into within ninety days after the termination of the earlier legal relationship; provided that no liens were perfected and attached on the property in the interim.

(b) The continuity of a tenancy by the entirety under this section shall apply to couples married under chapter 572, civil union partners under chapter 572B, and reciprocal beneficiaries under chapter 572C.

(c) Nothing in this section precludes any individuals from opting to hold their property in another manner as permitted under this chapter.

(d) Nothing in this section shall impact liens perfected and attached on the property after the earlier legal relationship was terminated and before the date this Act became law upon its approval.”

SECTION 3. Chapter 572B, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§572B-A Rights held by reciprocal beneficiaries who enter into a civil union. (a) If two reciprocal beneficiaries enter into a civil union with each other, the rights, benefits, protections, or responsibilities created by the reciprocal beneficiary relationship shall be continuous through the civil union and deemed to have accrued as of the first date these rights existed under the reciprocal beneficiary relationship; provided that the individuals terminated their reciprocal beneficiary relationship simultaneously with their entry into a civil union, or within the ninety days immediately preceding their entry into a civil union.

(b) Any rights, benefits, protections, or responsibilities created by the solemnization of a civil union that were not included within a reciprocal beneficiary relationship shall be recognized as of the date the civil union was solemnized.

(c) Property held in tenancy by the entirety shall be subject to section 509- .

§572B-B Religious organizations and facilities; liability exemption under certain circumstances. (a) A religious organization shall not be required to make a religious facility owned or leased by the religious organization available for solemnization of a civil union; provided that:

- (1) The religious facility is regularly used by the religious organization for its religious purposes;
- (2) For solemnization of marriages pursuant to chapter 572, the religious organization restricts use of the religious facility to its members; and
- (3) The religious organization does not operate the religious facility as a for profit business.

(b) A religious organization that refuses to make a religious facility available for solemnization of a civil union under subsection (a) shall not be subject to any fine, penalty, or civil liability for the refusal.

(c) Nothing in this section shall be interpreted to exempt the owner or operator of any religious facility from the requirements of chapter 489 if the religious facility is a place of public accommodation as defined in section 489-2.”

SECTION 4. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

“§572-1 Requisites of valid marriage contract. In order to make valid the marriage contract, which shall be only between a man and a woman, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew, whether the relationship is the result of the issue of parents married or not married to each other[;] or parents who are partners in a civil union or not partners in a civil union;

- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;
- (3) The man does not at the time have any lawful wife or civil union partner living and that the woman does not at the time have any lawful husband or civil union partner living;
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The man and woman to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the man and the woman to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony."

SECTION 5. Section 572B-2, Hawaii Revised Statutes, is amended to read as follows:

"[§572B-2] Eligibility to enter into a civil union. A person shall be eligible to enter into a civil union only if the person is:

- (1) Not a partner in another civil union[;] or a spouse in a marriage[; or a party to a reciprocal beneficiary relationship pursuant to chapter 572C];
- (2) At least eighteen years of age; and
- (3) Not related to the other proposed partner in the civil union, as provided in section 572B-3."

SECTION 6. Section 572B-4, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Any judge or retired judge, including a federal judge or judge of another state who may legally join persons in chapter 572 or a civil union, may solemnize a civil union. Any ~~[ordained or licensed member of the clergy] minister, priest, or officer of any religious denomination or society who has been ordained or is authorized to solemnize civil unions according to the usages of such denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of that society,~~ may solemnize a civil union. [Solemnization may be entirely secular or may be performed according to the forms and usages of any religious denomination in this State. Nothing in this section shall be construed to require any person authorized to perform solemnizations of marriages or civil unions to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine or other penalty for the failure or refusal.]

(c) Nothing in this section shall be construed to require any person authorized to perform solemnizations pursuant to chapter 572 or civil unions pursuant to this chapter to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil

union shall be subject to any fine ~~[or other]~~, penalty, or other civil action for the failure or refusal.”

SECTION 7. Section 572B-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No persons may be joined in a civil union in this State unless both partners have:

- (1) Met the requirements of section 572B-2;
- (2) Complied with section 572B-6 and, if applicable, section 572B-7; and
- (3) Been issued a license by an agent ~~[in the judicial circuit in which a civil union is to be solemnized or in which either person resides]~~, which license shall bear the certification of the agent that the persons named therein have met the requirements of section 572B-2 and have complied with section 572B-6 and, if applicable, section 572B-7.”

SECTION 8. Section 572B-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The fee for a license to enter into a civil union shall be an amount equal to the amount prescribed in section 572-5, and all amounts collected ~~[by the agent]~~ pursuant to section 321-1(g) as application fees under this chapter shall be retained or remitted and apportioned in the same manner as prescribed in section 572-5.”

SECTION 9. Section 572B-8, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Each person who solemnizes a civil union shall certify upon the civil union license certificate ~~[the fact, time, and place of the solemnization of the civil union]~~ all the facts required to be stated in a standard certificate of civil union, the form and contents of which shall be prescribed by the department of health, and return the certificate to the ~~[agent]~~ department of health within three business days following the solemnization of the civil union, or as may otherwise be prescribed by the department of health.

(b) If any person who has solemnized a civil union fails to return the certificate to the ~~[agent]~~ department of health as required under subsection (a), the partners joined in a civil union may provide the ~~[agent]~~ department of health with a notarized affidavit attesting to the fact that they were joined in a civil union and stating the date and place of the solemnization of the civil union. Upon the receipt of that affidavit by the ~~[agent,]~~ department of health, the civil union of the partners shall be deemed to be valid as of the date of the solemnization of the civil union stated in the affidavit.”

SECTION 10. Section 572B-10, Hawaii Revised Statutes, is amended to read as follows:

“[§572B-10]—Civil unions] Unions performed in other jurisdictions. ~~[All unions entered into in other jurisdictions between two individuals not recognized under section 572-3 shall be recognized as civil unions;]~~ A legal union of two persons that is not a marriage under chapter 572, which was validly formed in another jurisdiction, and which is substantially equivalent to a civil union under this chapter, shall be recognized as a valid civil union in this State and shall be treated the same as a civil union entered into in this State regardless of whether it bears the name civil union; provided that the relationship meets the eligibility

requirements of this chapter, has been entered into in accordance with the laws of that jurisdiction, and can be documented.”

SECTION 11. Section 572C-4, Hawaii Revised Statutes, is amended to read as follows:

“[§572C-4] Requisites of a valid reciprocal beneficiary relationship. In order to enter into a valid reciprocal beneficiary relationship, it shall be necessary that:

- (1) Each of the parties be at least eighteen years old;
- (2) Neither of the parties be married ~~[nor]~~, a party to another reciprocal beneficiary relationship~~[-]~~, or a partner in a civil union;
- (3) The parties be legally prohibited from marrying one another under chapter 572;
- (4) Consent of either party to the reciprocal beneficiary relationship has not been obtained by force, duress, or fraud; and
- (5) Each of the parties sign a declaration of reciprocal beneficiary relationship as provided in section 572C-5.”

SECTION 12. Section 572C-7, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

~~“(c) [Any marriage license subsequently issued by the department to any individual registered as a] A reciprocal beneficiary relationship shall automatically terminate [the individual’s existing reciprocal beneficiary relationship.]~~
when:

- (1) Either party to the reciprocal beneficiary relationship enters into a marriage or civil union solemnized by a person licensed by the department of health; or
- (2) Either party to the reciprocal beneficiary relationship enters into a union outside the State that is recognized by law as a marriage or civil union in the State.
- (d) If either party to a reciprocal beneficiary relationship enters into a legal marriage~~[-]~~ or civil union, the parties shall no longer have a reciprocal beneficiary relationship and shall no longer be entitled to the rights and benefits of reciprocal beneficiaries~~[-]~~, except as provided in section 572B-A.”

SECTION 13. Section 574-1, Hawaii Revised Statutes, is amended to read as follows:

“§574-1 Married persons~~[-]~~; civil union partners. Upon marriage or civil union, each of the parties to a marriage or partners in a civil union shall declare the middle and last names each will use as a married person~~[-]~~ or civil union partner. The last name or names chosen may be any middle or last name legally used at any time, past or present, by either spouse~~[-]~~ or partner, or any combination of such names, which may, but need not, be separated by a hyphen. The middle name or names chosen may be any middle or last name legally used at any time, past or present, by either spouse~~[-]~~ or partner, or any combination of such names, which may, but need not, be separated by a hyphen.”

SECTION 14. Section 574-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) It shall be unlawful to change any name adopted or conferred under this chapter, except:~~

- (1) Upon an order of the lieutenant governor;

- (2) By a final order, decree, or judgment of the family court issued as follows:
 - (A) When in an adoption proceeding a change of name of the person to be adopted is requested and the court includes the change of name in the adoption decree;
 - (B) When in a divorce proceeding either party to the proceeding requests to resume the middle name or names and the last name used by the party prior to the marriage or civil union or a middle name or names and last name declared and used during any prior marriage or civil union and the court includes the change of names in the divorce decree; or
 - (C) When in a proceeding for a change of name of a legitimate or legitimated minor initiated by one parent, the family court, upon proof that the parent initiating the name change has made all reasonable efforts to locate and notify the other parent of the name change proceeding but has not been able to locate, notify, or elicit a response from the other parent, and after an appropriate hearing, orders a change of name determined to be in the best interests of the minor; provided that the family court may waive the notice requirement to the noninitiating, noncustodial parent where the court finds that the waiver is necessary for the protection of the minor;
- (3) Upon marriage or civil union pursuant to section 574-1;
- (4) Upon legitimation pursuant to section 338-21; or
- (5) By an order or decree of any court of competent jurisdiction within any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, changing the name of a person born in this State.

[Any] Notwithstanding any law to the contrary [notwithstanding], no person who is a covered offender subject to the registration requirements of section 846E-2 may obtain a name change, other than as provided in paragraph (2), (3), (4), or (5), unless a court determines that it is in the best interest of justice to grant the petition and that doing so will not adversely affect the public safety."

SECTION 15. Section 580-1, Hawaii Revised Statutes, is amended to read as follows:

"§580-1 Jurisdiction; hearing. Exclusive original jurisdiction in matters of annulment, divorce, and separation, subject to section 603-37 as to change of venue, and subject also to appeal according to law, is conferred upon the family court of the circuit in which the applicant has been domiciled or has been physically present for a continuous period of at least three months next preceding the application therefor. No absolute divorce from the bond of matrimony shall be granted for any cause unless either party to the marriage has been domiciled or has been physically present in the State for a continuous period of at least six months next preceding the application therefor. A person who may be residing on any military or federal base, installation, or reservation within the State or who may be present in the State under military orders shall not thereby be prohibited from meeting the requirements of this section. The family court of each circuit shall have jurisdiction over all proceedings relating to the annulment, divorce, and separation of civil unions entered into in this State or unions recognized as civil unions in this State in the same manner as marriages."

SECTION 16. If two individuals terminated a reciprocal beneficiary relationship on or after October 3, 2011, but before the date this Act became law

upon its approval, and the two individuals subsequently enter or entered into a civil union no later than ninety days after their reciprocal beneficiary relationship terminated, their reciprocal beneficiary relationship shall be deemed to continue uninterrupted until the civil union is or was solemnized. The couple shall suffer no loss or interruption of any rights, benefits, protections, or obligations derived from their reciprocal beneficiary relationship, and those rights, benefits, protections, or obligations shall be deemed to have accrued as of the first date they existed under the beneficiary relationship, if they meet the requirements of this section.

For purposes of this section, holding title to property as tenants by the entirety shall be included among the rights of a reciprocal beneficiary relationship that shall continue uninterrupted under this section; provided that no intervening liens were perfected and attached on the property after the reciprocal beneficiary relationship was terminated, and before the date this Act became law upon its approval.

SECTION 17. Notwithstanding subsection 572C-7(c), Hawaii Revised Statutes, if before the effective date of this section, two individuals entered into a valid legal union in another jurisdiction that is not a marriage recognized under chapter 572, Hawaii Revised Statutes, and is substantially equivalent to a civil union under chapter 572B, Hawaii Revised Statutes, and are also parties to a reciprocal beneficiary relationship in this State, the reciprocal beneficiary relationship shall terminate and their valid legal union entered into in another jurisdiction shall be recognized as a civil union under section 572B-10, Hawaii Revised Statutes, on the voluntary termination of the reciprocal beneficiary relationship under subsection 572C-7(a), Hawaii Revised Statutes, but no later than one year after the date this Act becomes law upon its approval.

SECTION 18. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 20. This Act shall take effect retroactive to January 1, 2012; provided that:

- (1) Section 16 shall take effect retroactive to October 3, 2011; and
- (2) Section 17 shall take effect upon its approval.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 268

H.B. NO. 1953

A Bill for an Act Relating to Emergency Medical Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that until recently, Hawaii Medical Center's two hospitals in Ewa Beach and Liliha provided comprehensive medical

services to almost two hundred thousand residents. In addition, the two hospitals operated some of the most-frequently used emergency rooms in the State. However, in December 2011, the Hawaii Medical Center's hospitals closed due to bankruptcy. Along with the closing of all of the hospitals' programs including their emergency rooms and the State's only organ transplant program, hundreds of patients were either discharged or transferred to other health care facilities in the State.

The legislature also finds that, with the closure of the Hawaii Medical Center hospitals, access to emergency medical care is in jeopardy. A greater burden is now placed on the city and county of Honolulu emergency medical services division to respond to emergency calls on the Leeward Coast and transport patients to emergency rooms elsewhere on Oahu. This increased workload threatens the ability of the division to provide acceptable levels of emergency medical services to communities on the Leeward Coast.

The purpose of this Act is to appropriate general funds to the department of health to assist the city and county of Honolulu emergency medical services division with expanding emergency medical services and ambulance services in communities in Leeward Oahu.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the purposes of increasing the on-call availability of emergency medical services and ambulance services:

- (1) In Ewa Beach to sixteen hours per day; and
- (2) In Nanakuli to twenty-four hours per day.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 269

S.B. NO. 2778

A Bill for an Act Making an Appropriation for Early Childhood Health.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. (a) There is established a childhood obesity prevention task force to develop and recommend legislation related to the prevention of childhood obesity.

- (b) The task force shall be composed of:
 - (1) The director of finance, or the director's designee;
 - (2) The director of commerce and consumer affairs, or the director's designee;
 - (3) The superintendent of education, or the superintendent's designee;
 - (4) The director of health, or the director's designee;
 - (5) The director of human services, or the director's designee;
 - (6) The director of taxation, or the director's designee;
 - (7) A representative from the department of the attorney general;
 - (8) A representative from the state advisory council on early childhood education and care;
 - (9) A representative from the board of education;
 - (10) A representative from the department of the attorney general;

- (11) A representative from the University of Hawaii's department of public health sciences;
 - (12) A representative from the University of Hawaii's John A. Burns school of medicine;
 - (13) A representative from the American Heart Association;
 - (14) A representative from the American Cancer Association;
 - (15) A representative from the American Diabetes Association;
 - (16) A representative from the Hawaii Association for the Education of Young Children;
 - (17) A representative from the house of representatives;
 - (18) A representative from the senate; and
 - (19) A representative selected by the governor.
- (c) The director of health shall serve as the chairperson or may designate a chairperson and vice chairperson.
- (d) The childhood obesity prevention task force shall:
- (1) Assemble accurate research, fiscal and demographic information, and justification to support policy development, and track outcomes; and
 - (2) Research other state, county, and organizational policy agendas and suggested best practices related to childhood obesity prevention policies.
- (e) The task force may create subcommittees for the purpose of developing policy recommendations.
- (f) The task force shall meet at least monthly from July through November 2012.
- (g) The task force shall be administratively attached to the department of health.
- (h) Members of the task force shall not receive compensation for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties under this Act.
- (i) The task force shall report its findings and recommendations, including proposed legislation, to the legislature no later than twenty days prior to the convening of the 2013 regular session, and shall be dissolved on December 31, 2012.

PART II

SECTION 2. There is appropriated out of the Hawaii tobacco settlement special fund, established pursuant to section 328L-2, Hawaii Revised Statutes, the sum of \$1 or so much thereof as may be necessary for fiscal year 2012-2013 to:

- (1) Collect and analyze Hawaii-specific early childhood obesity data to identify children at risk;
- (2) Increase awareness of the health implications of early childhood obesity; and
- (3) Promote best practices through community-based initiatives to improve healthy life choices, such as training and technical assistance to child care providers to promote exercise and nutrition best-practices and the advantages of breastfeeding.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 270

S.B. NO. 1500

A Bill for an Act Relating to Anatomical Gifts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to save lives and improve the quality of life of Hawaii's people who need organ transplantation. This Act also is intended to improve the quality of medical education in Hawaii by ensuring that the proper individuals and entities fulfill their obligation to effectuate anatomical gifts.

SECTION 2. Section 327-14, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) Subject to sections 327-11(h) and 327-23, the rights of the person to which a body part passes under section 327-11 are superior to rights of all others with respect to the body part. The person ~~[may] to whom an anatomical gift passes under this chapter shall~~ accept or reject ~~[an] the anatomical gift [in whole or in part.] unless the anatomical gift is medically unsuitable for transplantation, therapy, research, or education. The acceptance shall occur when the anatomical gift is made under this chapter, regardless of whether another person, including family members of the donor, has made an anatomical gift.~~ Subject to the terms of the document of gift and this part, a person that accepts an anatomical gift of an entire body may allow embalming or cremation and use of remains in a funeral service. If the gift is of a body part, the person to which the body part passes under section 327-11, upon the death of the donor and before embalming or cremation, shall cause the body part to be removed without unnecessary mutilation."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

ACT 271

S.B. NO. 3006

A Bill for an Act Relating to Motor Vehicle Tires.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that discarded motor vehicle tires continue to blight Hawaii's neighborhoods, particularly in rural and isolated areas. With the repeal of the motor vehicle tire surcharge, the department of health lost a vital source of funding to promote tire recovery and prevent illegal dumping. Subsequent personnel and operating budget cuts have made it difficult for the department to address this critical issue.

The purpose of this Act is to establish a task force to study ways to prevent or control the problem of abandoned tires littering the landscape.

SECTION 2. (a) The director of health shall convene a task force to study ways to prevent or control the problem of abandoned tires littering the landscape.

- (b) The task force shall be composed of:
 - (1) The director of health, or the director's designee;
 - (2) The chairperson of the board of land and natural resources, or the chairperson's designee;
 - (3) A representative of the city and county of Honolulu department of environmental services;
 - (4) A representative of the Honolulu police department;
 - (5) Elected officials of affected communities, as determined by the department of health;
 - (6) A representative from each of the neighborhood boards of affected communities, as determined by the department of health;
 - (7) A representative of the tire recycling industry, to be selected by the department of health;
 - (8) A representative of the vehicle recycling industry, to be selected by the department of health;
 - (9) A representative of tire retailers, to be selected by the department of health;
 - (10) A representative of automobile dealers, to be selected by the department of health;
 - (11) A representative of Ka Wai Ola O Waianae; and
 - (12) A representative of the Naval Facilities Engineering Command.
- (c) The task force shall be administratively attached to the department of health.
- (d) No member of the task force created by this measure shall be made subject to chapter 84, Hawaii Revised Statutes, solely because of that member's participation on the task force.

SECTION 3. Members of the task force shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

SECTION 4. The task force shall report its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days before the convening of the regular session of 2014, and shall be dissolved on December 31, 2013.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

ACT 272

S.B. NO. 2813

A Bill for an Act Relating to the Disability and Communication Access Board Special Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 348F-7, Hawaii Revised Statutes, is amended to read as follows:

“[§348F-7] Disability and communication access board special fund. (a) There is established the disability and communication access board special fund to be administered by the disability and communication access board. All moneys received by the disability and communication access board

[as application fees for credentialing of interpreters] shall be deposited into the special fund. All interest earned or accrued on moneys deposited into this special fund shall become part of the special fund.

(b) Moneys in the disability and communication access board special fund shall be expended to ~~[eover all]~~ defray costs of administering this chapter ~~[including the costs of administering the program for the state credentialing of interpreters].~~

(c) All moneys collected as application fees or fees for continuing education units for credentialing of interpreters shall be deposited into the disability and communication access board special fund."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 273

S.B. NO. 2816

A Bill for an Act Relating to Hospital Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 321-14.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The rules may provide that accreditation by the joint commission on accreditation of healthcare organizations demonstrates a hospital's compliance with all licensing inspections required by ~~[rules for the year in which the joint commission on accreditation of healthcare organizations accreditation is issued.]~~ the State. The rules may exempt a hospital from a licensing inspection ~~[for the year in which a joint commission on accreditation of healthcare organizations accreditation is issued]~~ on a continuing basis throughout the term of the accreditation under the following conditions:

- (1) The hospital provides a certified copy of the hospital's official joint commission on accreditation of healthcare organizations accreditation report to the department;
- (2) The hospital continuously holds full accreditation by the joint commission on accreditation of healthcare organizations; and
- (3) The hospital holds a current and valid state license."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that bone marrow transplantation services are not available in the State. This procedure is used to treat patients with leukemia, aplastic anemia, lymphomas such as Hodgkin's disease, multiple myeloma, immune deficiency disorders, and some solid tumors such as breast and ovarian cancer.

The purpose of this Act is to implement a bone marrow transplantation program in the State by appropriating funds as a grant for Kapiolani Medical Center for Women and Children to establish an apheresis stem cell collection program to support pediatric bone marrow transplantation to serve all young children to adulthood.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2012-2013 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Kapiolani Medical Center for Women and Children to establish an apheresis stem cell collection program to support pediatric bone marrow transplantation to serve all young children to adulthood.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

A Bill for an Act Relating to the Hawaii Immunization Registry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 325-121, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

““Health organization” means a health insurance company, fraternal benefit society governed by article 2 of chapter 432, mutual benefit society governed by article 1 of chapter 432, health care service plan or health maintenance organization governed by chapter 432D, or any other entity delivering or issuing for delivery in the State accident and health or sickness insurance as defined in section 431:1-205.

“Immunization assessment report” means any registry-produced report designed to provide a detailed listing of the immunizations an individual has received as well as immunizations that are currently due or overdue. Immunization assessment reports may also include aggregate reports produced to monitor and improve the health of a specific population or public health in general.”

2. By amending the definition of “health care provider” to read:

““Health care provider” means a program, agency, clinic, health care center, physician licensed under the provisions of chapter 453, advanced practice

registered nurse recognized under the provisions of chapter 457, pharmacist licensed under the provisions of chapter 461, physician's assistant licensed under the provisions of chapter 453, ~~[or]~~ person authorized to practice medicine as a physician or physician's assistant, or nursing as an advanced practice registered nurse, in federal facilities located in the State, that administers immunizations in Hawaii~~[-]~~, or any other person authorized to prescribe vaccinations in Hawaii."

SECTION 2. Section 325-123, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Registry information shall be limited to patient name, demographic information, and contact information; information specific to immunizations or medications received by the patient, including types, manufacturers, lot numbers, expiration dates, anatomical sites of administration, routes of administration, vaccine information statement publication dates, doses, dates administered, the patient's history of vaccine-preventable diseases, and contraindications, precautions, adverse reactions to, or comments regarding immunizations or medications; and the name and contact information of the vaccination administrator or medication provider and the patient's health care provider.

(c) The department of health shall adopt administrative, physical, and technical measures to ensure the security of the registry ~~[to]; protect the confidentiality, integrity, and availability of registry data; and prevent unauthorized access to registry information.~~"

SECTION 3. Section 325-124, Hawaii Revised Statutes, is amended to read as follows:

"[[§325-124]] Purposes for access to registry information; access not a disclosure. (a) Notwithstanding section 325-123, it shall not be a disclosure for the persons listed in subsections (b), (c), ~~[and]~~ (d), and (e) to have limited access to registry information for the purposes specified in each subsection.

(b) Registry information regarding specific individuals in the registry may be accessed by authorized health care providers who are treating, have treated, or have been assigned to treat those individuals; by authorized employees of these health care providers; and by authorized department of health personnel assigned to monitor the immunization or health status of those individuals for the purposes of:

- (1) Recording the administration of any vaccination, including pandemic influenza vaccine;
- (2) Determining the immunization history of a patient to deliver health care treatment accordingly;
- (3) Notifying individuals or parents or legal guardians of the need to schedule a visit for an immunization;
- (4) Generating official immunization records;
- (5) Ensuring compliance with mandatory immunization requirements; ~~[or]~~
- (6) Recording the distribution of prophylactic and treatment medications administered or dispensed in preparation for and in response to a potentially catastrophic disease threat~~[-]; or~~
- (7) Complying with Hawaii vaccines for children and other state-provided vaccine programs' vaccine ordering and accountability policies and procedures.

(c) Registry information regarding specific individuals in the registry may be accessed by school and post-secondary school personnel authorized by the director of health, the superintendent of education, or the administrator of

a private or post-secondary school for the purpose of ensuring compliance with mandatory student immunization requirements.

(d) Registry information regarding specific individuals in the registry may be accessed by authorized health organizations that have been contracted to provide health insurance or health plan coverage for those individuals; provided that access is limited to only the enrollees, members, subscribers, and insureds of the authorized health organization, and for the purpose of producing immunization assessment reports by the authorized health organization.

~~[(d)]~~ (e) Registry information regarding specific individuals in the registry may be accessed by the department of health or agents of the department of health for the purposes of:

- (1) Ensuring compliance with mandatory immunization requirements;
- (2) Performing immunization-related quality improvement or quality assessment activities;
- (3) Complying with Hawaii vaccines for children ~~[and teen-vax]~~ and other state-provided vaccine programs' vaccine ordering and accountability policies and procedures;
- (4) Producing aggregate immunization assessment reports to monitor and improve public health;
- (5) Supporting efforts to prevent and manage outbreaks of vaccine-preventable diseases, including pandemic influenza;
- (6) Assisting the department of health in the event of a public health emergency; or
- (7) Managing and maintaining the Hawaii immunization registry system.

~~[(e)]~~ (f) The use of registry information accessed pursuant to this section shall be limited to the purposes for which access is granted."

SECTION 4. Section 325-125, Hawaii Revised Statutes, is amended to read as follows:

["§325-125"] Registry record requirements; duration of retention. (a)

The establishment of an individual's record in the registry shall not require the prior consent of a patient or the consent of a patient's parent or legal guardian in the case of a minor or dependent.

(b) The department of health shall make available to the patient or the patient's parent or legal guardian in the case of a minor or dependent, via the patient's health care provider or birthing hospital, a written description of the purpose and benefits of the registry as well as the procedure for refusing inclusion in the registry. ~~[No registry information shall be established in the registry for any patient who in writing refuses, or, in the case of a minor or dependent, the patient's parent or legal guardian who in writing refuses to allow the information to be included in the registry.]~~

(c) A patient's, or in the case of a minor, the minor's parent's or legal guardian's, choice to refuse inclusion in the registry shall be documented in writing on a form or in a format approved by the department of health.

(d) Each health care provider or birthing hospital shall maintain the records of refusal of inclusion and shall report any refusal to the department of health in a manner specified by rule.

(e) When a patient, or in the case of a minor, the minor's parent or legal guardian, chooses to refuse inclusion in the registry, minimal demographic information, including the patient's name and date of birth, shall be maintained within the registry system to identify the patient as having elected to refuse inclusion in the registry. If the patient has an existing record in the registry at the time

that the refusal documentation is submitted, all other patient demographic and immunization information shall be removed from the registry.

(f) All registry authorized users shall make available for inspection by the department of health all medical records relating to patient demographic and immunization information recorded in the registry or documentation of the patient's, or in the case of a minor, the minor's parent's or legal guardian's refusal of inclusion in the registry for the purposes of performing registry-related quality improvement or quality assessment activities.

~~[(b)]~~ (g) Registry information for any individual included within the registry shall be retained as a part of the registry for twenty-five years after the last entry, except in the case of minors, whose records shall be retained during the period of minority plus twenty-five years after the minor reaches the age of majority. At the conclusion of the retention period, the data stored in the registry for that individual shall be archived."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

ACT 276

S.B. NO. 2827

A Bill for an Act Relating to the Trauma System Special Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 321-22.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The moneys in the trauma system special fund shall be used by the department to support the continuing development and operation of a comprehensive state trauma system. The trauma system special fund shall be used to subsidize the documented costs for the comprehensive state trauma system, including but not limited to the following:

- (1) Costs of under-compensated and uncompensated trauma care incurred by hospitals providing care to trauma patients; ~~and~~
- (2) Costs incurred by hospitals providing care to trauma patients to maintain on-call physicians for trauma care~~[-]; and~~
- (3) Costs to staff and operate the State's injury prevention program.

The money in the trauma system special fund shall not be used to supplant funding for trauma services authorized prior to July 1, 2006, and shall not be used for ambulance or medical air transport services."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

A Bill for an Act Relating to Building Design for Persons with Disabilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Hawaii law requires that all plans and specifications for the construction of public buildings, facilities, and sites be prepared so that persons with disabilities may access and use the buildings, facilities, and sites. Section 103-50, Hawaii Revised Statutes, requires that buildings, facilities, and sites conform to the Americans with Disabilities Act Accessibility Guidelines and the Federal Fair Housing Amendments Act of 1988, which establish the design standard for accessibility to persons with disabilities.

The legislature established a mechanism for the review by the disability and communication access board of all plans and specifications for state and county buildings, facilities, and sites or buildings, facilities, and sites funded with state or county funds to ensure that design and construction plans are compliant before the construction of the building, facility, or site begins. The disability and communication access board reviews, free of charge, an average of nine hundred to one thousand plans each year.

The legislature finds that compliance with the statutory design requirements to ensure accessibility is not consistent or uniformly understood in the architectural, engineering, and design community. The legislature further finds that the review process by the disability and communication access board is a valuable service that should be continued. The review process ensures appropriate access to people with disabilities by uncovering design flaws that are corrected before construction, which prevents costly litigation and retrofits.

The legislature believes that the fees required to be charged under this Act by the disability and communication access board should be incorporated into the capitalization costs of the projects. A reasonable fee schedule will generate revenues sufficient to pay for the salaries of the staff conducting the reviews after June 30, 2013. The review process will remain funded by the general fund until June 30, 2013. The fees will provide a mechanism to defray all or a portion of the costs of the review process.

The purpose of this Act is to require the disability and communication access board to charge established fees for their review, similar to other fees that are charged for permits, as part of the design and construction process.

SECTION 2. Section 103-50, Hawaii Revised Statutes, is amended to read as follows:

“§103-50 Building design to consider needs of persons with disabilities[-]; review fees. (a) Notwithstanding any other law to the contrary, all plans and specifications for the construction of public buildings, facilities, and sites shall be prepared so that the buildings, facilities, and sites are accessible to and usable by persons with disabilities. The buildings, facilities, and sites shall conform to the Americans with Disabilities Act Accessibility Guidelines, Title 36 Code of Federal Regulations Part 1191, and the requirements of the Federal Fair Housing Amendments Act of 1988, as established in Title 24 Code of Federal Regulations Part 100, Subpart D, as adopted and amended by the disability and communication access board under chapter 348F.

(b) All state and county agencies subject to this section shall seek advice and recommendations from the disability and communication access board on any construction plans prior to commencing with construction.

(c) The disability and communication access board shall adopt rules pursuant to chapter 91 for the design of buildings, facilities, and sites, by or on behalf of the State and counties to effectuate the purposes of this section, except that the board, without regard to chapter 91, instead, may adopt federal amendments to the Americans with Disabilities Act Accessibility Guidelines, Title 36 Code of Federal Regulations Part 1191.

(d) The disability and communication access board may approve a [site specific] site-specific alternate design when an alternate design provides equal or greater access.

(e) The disability and communication access board shall charge a review fee for services rendered pursuant to section 348F-3. The review fees shall be four-tenths of one per cent for the first \$500,000 of the estimated construction cost plus two-tenths of one per cent of the estimated construction costs greater than \$500,000 up to and including \$2,000,000 plus two one-hundredths of one per cent of the estimated construction costs over \$2,000,000 except as follows:

- (1) The minimum review fee for plans and specifications subject to accessibility guidelines under this section shall be \$200;
- (2) The disability and communication access board may limit the maximum review fee for plans and specifications of infrastructure projects or projects managed by private nonprofit entities to \$3,000; and
- (3) There shall be a \$50 review fee for projects with plans and specifications that do not reflect any elements subject to accessibility guidelines under this section.

(f) All moneys collected as review fees shall be deposited into the disability and communication access board special fund established under section 348F-7.

(g) The disability and communication access board shall report to the legislature annually no later than twenty days prior to the convening of each regular session regarding the revenues collected under this section. The report shall include a summary of the number and types of plans reviewed and the amount of review fees collected from each state or county department or agency.

(e)(h) For the purposes of this section[, “public]:

“Infrastructure” or “infrastructure project” includes water, drainage, sewer, waste disposal and waste treatment systems, roads, and street lighting and projects relating to that infrastructure. Projects with significant work to accessible elements and spaces shall not be considered infrastructure projects.

“Public buildings, facilities, and sites” means buildings, facilities, [and] sites, and the infrastructure thereof that:

- (1) Are designed, constructed, purchased, or leased with the use of any state or county funds or federal funds administered by the State or a county;
- (2) House state or county programs, services, or activities that are intended to be accessed by the general public; or
- (3) Are constructed on state or county lands or lands that will be transferred to the State or a county.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2013.

(Approved July 6, 2012.)

ACT 278

H.B. NO. 2656

A Bill for an Act Relating to Air Pollution Control.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Under existing federal and state law, crematoriums constructed prior to March 20, 1972, are exempt from air pollution control permit requirements, including those contained in chapter 342B, Hawaii Revised Statutes. The legislature finds that it is in the interest of the public health to require all crematoriums operating within the State to be subject to air pollution control permitting requirements.

SECTION 2. Chapter 342B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342B- Crematoriums. Crematoriums of human remains operating within the State shall be subject to the permit requirements of this chapter; provided that the owners or operators of any crematoriums constructed before March 20, 1972, and operating within the State without a permit shall submit permit applications to the department no later than December 31, 2013.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 279

H.B. NO. 2664

A Bill for an Act Relating to Health Care Coordination.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that health care providers in the county of Maui, including Maui Memorial Medical Center and Hale Makua Health Services, have been highly successful in serving the residents of the county for generations. However, recent changes in government policies and rules or regulations, changing demographics, and a changing marketplace have made it extremely difficult for health care providers in the county to maintain a level of efficiency in a financially sustainable way.

In assessing the situation, the legislature finds that Maui's population is growing rapidly, yet the island has limited health care infrastructure. The population is also aging rapidly, as many retirees are migrating to Maui from Oahu, other parts of the State, and the mainland. In fact, the elderly population on Maui is expected to double by 2035. Maui has also been more affected by the recession than other parts of the State, and there has been a recent increase in the unemployment rate and corresponding decrease in average household income.

Given its unique topography and patterns of population density, access to health care is one of the most challenging issues in Maui county, and is exac-

erbated by the county's rural population and shortage of health care providers. Health care provision in Maui county is fragmented and is comprised of independent providers that deliver care on an episodic basis. This lack of coordinated care results in an inefficient delivery system across the continuum of care.

The legislature further finds that post-acute care options in Maui are limited as a result of the poor overall payer mix, in addition to the challenges of caring for patients with special needs. The overall payer mix is disproportionately weighted toward medicaid, which creates a financial burden for Maui's limited sub-acute providers and often results in the delay or refusal of transfers of low- or no-pay patients. The State of Hawaii's recent decision to privatize the medicaid program for the aged, blind, and disabled has also adversely affected the census in post-acute facilities as well as reimbursements for care of vulnerable populations.

In addition, there is inadequate physician coverage to admit and discharge patients from post-acute care facilities, and an underutilization of home health agency options. Hawaii's diverse cultural preferences contribute to a higher percentage of patients choosing to receive end-of-life care in the hospital rather than in a home-setting, which impacts costs and further exacerbates the waitlist issue. The inability of post-acute care providers to accept high cost patient admissions contributes to a high waitlist in acute care facilities, limiting availability of other acute care services.

Maui Memorial Medical Center, the county's largest full-service acute care facility, maintains a high census of patients who are in the acute care setting while waiting for discharge to a post-acute setting. Over the past two years, twenty-five to forty waitlist patients occupied acute care beds every day because of a lack of viable discharge options. The waitlist of patients causes Maui Memorial Medical Center to delay or divert acute care admissions, resulting in additional burdens for patients and other providers. Although there is another acute care hospital on Maui, the travel distance from central Maui and high elevation location of the facility limit access to the care that can be provided there.

Furthermore, the legislature finds that there is a shortage of long-term care and skilled nursing facility beds for special needs patients, which results in an extensive waitlist. Hale Makua Health Services, Maui's largest skilled nursing facility, experiences a negative margin for medicaid patients, who constitute approximately seventy to eighty per cent of the facility's payer mix. Because of thin reimbursement margins and additional costs associated with intravenous therapy antibiotics, expensive medications, and one-on-one care for patients with behavioral challenges, Hale Makua Health Services is often unable to take Maui Memorial Medical Center's waitlisted patients. The weakening payer mix and recent regulatory changes have resulted in over sixty empty beds in Hale Makua Health Services' two nursing homes. Hale Makua Health Services has had to consolidate and decertify thirty-four skilled nursing beds, and is seeking to change licensure to a care home, further reducing skilled nursing facility capacity.

The legislature therefore finds that these challenges in Maui county to health care delivery and coordination at multiple levels of care have risen to a crisis level. The resolution of the crisis requires coordinated efforts of private and public health care providers, providing care at all levels of care. Without an aggressive response to these challenges, the viability of community-based nonprofit entities providing health care in the community is jeopardized. This will create a downward spiral of deterioration that could exacerbate the existing crisis.

In response, Maui Memorial Medical Center and Hale Makua Health Services have been evaluating a number of organizational alternatives to facilitate

long-term stability in the health care delivery system in a cost-effective way and have opened discussions to identify opportunities for collaboration. One of the goals is to achieve operational synergies and cost efficiency that will address the crisis and benefit both organizations, which will in turn benefit residents of the county of Maui. Options for collaboration may include organizational realignment and affiliation strategies. Both organizations are also working diligently to develop a partnership plan to provide sustainable, effective, well-coordinated, quality health care at all levels in certain parts of the State.

The legislature finds that innovative partnerships have long been a means of addressing challenges arising from structural changes in the health care industry. To realize effective partnerships to resolve a crisis of this magnitude requires support from the State of Hawaii. It is therefore the intent of the legislature to support the resolution of the current crisis in health care delivery and coordination in Maui.

The legislature believes that the public-private partnership established by this Act will encourage appropriate discharge of patients not requiring acute care from acute settings and placement of those patients into appropriate sub-acute care settings for more efficient and cost-effective quality post-acute care, will serve patients better, and will also expand inpatient capacity at acute facilities. This will allow acute care providers to better serve those within its service area who need care in an acute setting.

The resulting model of health care delivery to be implemented by this public-private partnership will address the crisis in the post-acute care environment and health care access and quality of care at all levels, while maximizing capacity and increasing operational and financial viability of public and private providers.

The purpose of this Act is to establish a public-private partnership to research, facilitate, develop, and implement a model and system of collaborative health care delivery in a county that encompasses at least three islands inhabited by permanent residents that moves patients, including acute care patients, throughout the continuum of care efficiently, appropriately, and cost-effectively.

SECTION 2. Chapter 323F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§323F- Public-private partnership. (a) There is established within the corporation for administrative purposes only a public-private partnership in a county that encompasses at least three islands inhabited by permanent residents, to research, develop, and implement a model of health care delivery that addresses the coordination of care across the spectrum of care from acute, to skilled nursing facility, to home, in a manner that is seamless, efficient, appropriate, and cost-effective.

(b) The public-private partnership shall:

- (1) Work to resolve the challenges in the post-acute care environment;
- (2) Expand inpatient capacity;
- (3) Improve access to and quality of health care; and
- (4) Enhance the operational and financial viability of public and private health care providers at all levels of care.

(c) The public-private partnership shall be mutually beneficial to stakeholders and consumers and shall be based upon the following:

(1) Short-term goals:

- (A) Provide a mechanism to move waitlisted patients to an appropriate long-term care setting;

- (B) Provide appropriate financial support to allow for the movement of patients along the continuum of care, regardless of the ability to pay;
 - (C) Maintain the financial viability of skilled nursing facilities by providing adequate funding from all sources; and
 - (D) Maintain the financial viability of full-service acute care facilities by reducing the number of waitlisted patients.
- (2) Long-term goals:
- (A) Improve the continuity of care and efficiency between providers;
 - (B) Enhance the quality of patient care;
 - (C) Create a patient-centered health care infrastructure;
 - (D) Maximize capacity and increase operational and financial viability among network organizations;
 - (E) Optimize existing resources to maximize return;
 - (F) Facilitate the transition of care between different levels of care;
 - (G) Reduce unnecessary transfers of patients and attract medically appropriate transfers from neighboring islands;
 - (H) Create reimbursement mechanisms that support integrated efforts;
 - (I) Reduce unnecessary health care use and prevent unnecessary hospitalizations and readmissions; and
 - (J) Expand access to specialty services to counties that encompass at least three islands inhabited by permanent residents.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 280

S.B. NO. 2344

A Bill for an Act Making an Appropriation for the Hawaii Health Authority.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2012-2013 for operational expenses relating to the Hawaii health authority.

The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

SECTION 2. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a shortage of long-term care beds in many areas of the State, including Oahu. This shortage has placed an undue burden on acute care hospitals that are experiencing a long list of patients who are awaiting placement in a long-term care bed. The waitlist problem presents quality of care issues for both patients who are awaiting long-term care beds and patients who need acute care beds.

The closing of Hawaii Medical Center further exacerbated the shortage by eliminating a large number of available long-term care beds along with the elimination of other needed services. Furthermore, the number and types of beds eliminated by the closing of Hawaii Medical Center could not be fully absorbed by the existing facilities in the State.

Hawaii health systems corporation, the fourth largest public hospital system in the nation, operates public health care facilities that provide essential safety-net hospital and long-term care services throughout the State. The legislature further finds that Leahi hospital, a facility of the Hawaii health systems corporation, can help alleviate the shortage of long-term care beds, but needs major renovation.

Accordingly, the legislature finds that it is in the public interest to establish a public-private partnership between the owners of the facility previously known as Hawaii Medical Center-East, located on Liliha street in Honolulu, and the Hawaii health systems corporation, to provide long-term care and other health care services in the State.

The purpose of this Act is to provide for the health care needs of the community by authorizing the Hawaii health systems corporation to bring the Hawaii Medical Center-East facility under its governance through formal affiliation or acquisition.

SECTION 2. Chapter 323F, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"§323F- Hawaii Medical Center-East; affiliation; acquisition. (a) Hawaii Medical Center-East on Oahu may be assimilated into the corporation by negotiation between the corporation and the owners of Hawaii Medical Center-East. Assimilation may be accomplished with the creation of a new entity, a partnership, a long-term lease, or any other vehicle determined to be in the best interests of the public by the corporation board and as negotiated with the owners of Hawaii Medical Center-East. After assimilation, Hawaii Medical Center-East shall be operated by the corporation, either directly, through contractors, or through a subsidiary.

(b) None of the liabilities of Hawaii Medical Center-East shall become liabilities of the corporation.

(c) Hawaii Medical Center-East, once assimilated, shall be exempt from chapter 102 and section 103-53, and its board of directors, if any, shall be exempt from part I of chapter 92.

(d) The purchase of goods and services by or on behalf of Hawaii Medical Center-East, after assimilation, shall be exempt from chapters 103D and 103F.

(e) Assimilation of Hawaii Medical Center-East into the Hawaii health systems corporation shall be exempt from part VII of chapter 323D.

(f) As used in this section, "Hawaii Medical Center-East" means the facility previously known as Hawaii Medical Center-East located on Liliha street on the island of Oahu."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 282

H.B. NO. 2398

A Bill for an Act Relating to Land Use.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. (a) The division of boating and ocean recreation is directed to transfer the development rights of the parcels of land identified by tax map keys (3)7-4-08:03 and (3)7-4-08:41 to the public land development corporation, and the land division is directed to transfer the development rights of the parcel of land identified by tax map key (3)7-4-08:71 to the public land development corporation; provided that the division of boating and ocean recreation and the land division shall continue to execute their respective responsibilities relating to negotiating or executing a contract for any request for proposal or managing any existing contract until the public land development corporation is able to assume the negotiating, oversight, and management responsibilities relating to the existing contract or request for proposal, as the case may be, or until June 30, 2013, whichever occurs first.

(b) The public land development corporation shall coordinate the development of the land pursuant to chapter 171C, Hawaii Revised Statutes.

PART II

SECTION 2. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

"§171-2 Definition of public lands. "Public lands" means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including accreted lands not otherwise awarded, submerged lands, and lands beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;

- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (9) Lands which are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
- (10) Lands which are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title; ~~and~~
- (11) Lands to which the high technology development corporation in its corporate capacity holds title~~[-]; and~~
- (12) Lands which are set aside by the governor to the public land development corporation; lands leased to the public land development corporation by any department or agency of the State; or lands to which the public land development corporation holds title in its corporate capacity."

SECTION 3. Section 171-64.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This section applies to all lands or interest therein owned or under the control of state departments and agencies classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or any other manner, including accreted lands not otherwise awarded, submerged lands, and lands beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, including:

- (1) Land set aside pursuant to law for the use of the United States;
- (2) Land to which the United States relinquished the absolute fee and ownership under section 91 of the Organic Act prior to the admission of Hawaii as a state of the United States;
- (3) Land to which the University of Hawaii holds title;
- (4) Land to which the Hawaii housing finance and development corporation in its corporate capacity holds title;

- (5) Land to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (6) Land that is set aside by the governor to the Aloha Tower development corporation; or land to which the Aloha Tower development corporation holds title in its corporate capacity;
- (7) Land that is set aside by the governor to the agribusiness development corporation; or land to which the agribusiness development corporation in its corporate capacity holds title; ~~and~~
- (8) Land to which the high technology development corporation in its corporate capacity holds title~~[-]; and~~
- (9) Land that is set aside by the governor to the public land development corporation or land to which the public land development corporation holds title in its corporate capacity."

PART III

SECTION 4. Chapter 171C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§171C- Stadium facilities special fund. (a) There is established a stadium facilities special fund into which shall be deposited all proceeds from leases, permits, interest income generated from Aloha Stadium lands and facilities, and other revenue generated from the non-permanent disposition of Aloha Stadium lands and facilities under this chapter, less the following:

- (1) The principal and interest on bonds issued pursuant to this chapter for projects on Aloha Stadium lands or utilizing Aloha Stadium facilities;
- (2) The cost of administering, operating, and maintaining projects on Aloha Stadium lands or utilizing Aloha Stadium facilities, not to exceed fifteen per cent of the sums collected, net of principal and interest payments on bonds; and
- (3) Other sums that may be necessary for the issuance of bonds under this chapter.

(b) The stadium facilities special fund shall be administered by the stadium authority. Except as otherwise provided, all moneys in the stadium facilities special fund shall be used exclusively for stadium purposes."

SECTION 5. Section 171C-2, Hawaii Revised Statutes, is amended by amending the definition of "development rights" to read as follows:

"Development rights" means all of the rights related to the development of a property including but not limited to the rights permitted under an ordinance or law relating to permitted uses of a property, the density or intensity of use, and the maximum height and size of improvements thereon."

SECTION 6. Section 171C-6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Notwithstanding any provision of this chapter to the contrary, when leasing corporation-controlled [public] land, the corporation may contract with a financial institution chartered under chapter 412 or a federal financial institution, as defined under section 412:1-109, that transacts business in this State or any state or county agency to provide lease management services. For the purposes of this subsection, "lease management services" includes the collection of

lease rent and any other moneys owed to the corporation related to the lease of [public] land under the corporation's control."

SECTION 7. Section 171C-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established the Hawaii public land development revolving fund, to which shall be credited any state appropriations to the fund, any sums collected as a result of bonds issued pursuant to this chapter, any revenues generated from the facilities, except as provided in section 171C-, or other moneys made available to the fund, to be expended as directed by the corporation."

PART IV

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 283

H.B. NO. 2883

A Bill for an Act Relating to Makaha Valley.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Makaha Valley is a major watershed on the Waianae coast. The runoff from this watershed flows into streams, which can result in flooding. Heavy rains also clog the valley, which overflows the rainwater into the surrounding area and accumulates in the lower valley.

A devastating landslide occurred in November 1996, after six hours of heavy rain, when two converging waterfalls sent rocks and mud down the mountainside, overwhelming a ten-foot-high rock retaining wall and surging through an upper level parking lot at the Makaha Valley Tower complex, burying or sweeping away approximately sixty cars and flooding the first floor of the building. Officials estimated that in a two-hour period, the storm caused millions of gallons of water to flow down the mountainside.

Over the years, the Makaha Valley area has experienced flooding. In December 2008, the eighteen-hole champion golf course in Makaha closed its seventh hole due to flood damage.

The federal government will not conduct a federal flood control study for Makaha Valley because Makaha Valley does not include federal land. Although a Waianae watershed management plan was prepared for the Honolulu board of water supply, a study focused specifically on Makaha Valley is vital to identify specific recommendations for the control of storm drainage to reduce recurring flooding to residences and businesses in the area.

The purpose of this Act is to require the department of land and natural resources to conduct a flood study for Makaha Valley and investigate all potential funding sources to finance the flood study and any improvements or repairs as recommended by the flood study.

SECTION 2. (a) The department of land and natural resources shall conduct a flood study for Makaha Valley on the island of Oahu. The flood study shall include but not be limited to:

- (1) Specific recommendations for the control of storm damage throughout Makaha Valley to reduce repetitive flooding to residences and businesses in the area;
- (2) A cost-benefit analysis of the recommendations proposed;
- (3) Identification and evaluation of the desired, intended, and potential unintended effects of the recommendations;
- (4) A timetable for the implementation of the recommendations; and
- (5) Any other issues deemed necessary or relevant by the chairperson of the board of land and natural resources.

(b) The department of land and natural resources shall submit a written report of its findings and recommendations, including proposed legislation, if any, to the legislature no later than twenty days prior to the convening of the regular session of 2013.

(c) The department of land and natural resources shall investigate all potential funding sources, including but not limited to any federal, state, county, or private funds, to finance the flood study and any necessary repairs and improvements recommended in the completed flood study.

SECTION 3. There is appropriated out of the special land and development fund established pursuant to section 171-19, Hawaii Revised Statutes, the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2012-2013 for a flood study for Makaha Valley.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 6, 2012.)

ACT 284

S.B. NO. 2378

A Bill for an Act Relating to Legacy Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 173A-4, Hawaii Revised Statutes, is amended to read as follows:

“§173A-4 Authority to acquire and convey[-]; easement required and exemption. (a) In consultation with the senate president and speaker of the house of representatives, the board may acquire, by purchase, gift, or the exercise of the power of eminent domain as authorized by chapter 101, any land having value as a resource to the State. Such acquisition is hereby declared to be for a public use.

(b) The board may, subject to chapter 171, in consultation with the senate president and speaker of the house of representatives, and with the approval of the governor, sell, lease, or otherwise convey any such land subject to terms and conditions that it deems appropriate and that will ensure that the transferee shall not use the land in a manner that is inconsistent with the purposes for which it was acquired by the board. The terms and conditions shall run with the land and shall be binding on the transferee's heirs, successors, and assigns. The

board may seek enforcement of the terms and conditions in any court of appropriate jurisdiction.

(c) The board ~~[may,]~~ shall, in consultation with the senate president and the speaker of the house of representatives, require as a condition of the receipt of funds that state~~[-]~~ and county[-, and nonprofit land conservation organizations] agencies receiving funds under this chapter provide a conservation easement under chapter 198, or an agricultural easement or deed restriction or covenant to the department of land and natural resources; the department of agriculture; the agribusiness development corporation; the public land development corporation; an appropriate land conservation organization; or a county, state, or federal natural resource conservation agency, that shall run with the land and be recorded with the land to ensure the long-term protection of land having value as a resource to the State and preserve the interests of the State. The board shall require as a condition of the receipt of funds that it be an owner of any such conservation easement.

(d) The board shall, in consultation with the senate president and the speaker of the house of representatives, require as a condition of the receipt of funds that nonprofit land conservation organizations receiving funds under this chapter provide a conservation easement under chapter 198, or an agricultural easement or deed restriction or covenant to the department of land and natural resources; the department of agriculture; the agribusiness development corporation; the public land development corporation; an appropriate land conservation agency; or an appropriate county, state, or federal natural resource conservation agency, that shall run with the land and be recorded with the land to ensure the long-term protection of land having value as a resource to the State and preserve the interests of the State. The board shall require as a condition of the receipt of funds that it be an owner of any such conservation easement.

(e) The board or an appropriate land conservation organization or county, state, or federal agency required to be provided an easement pursuant to this section may grant an exemption for any easement required pursuant to this section."

SECTION 2. Section 173A-5, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) Based on applications from state agencies, counties, and nonprofit land conservation organizations, the department, in consultation with the senate president and speaker of the house of representatives, shall recommend to the board specific parcels of land to be acquired, restricted with conservation easements, or preserved in similar fashion. The board shall review the selections and approve or reject the selections according to the availability of moneys in the fund. To be eligible for grants from the fund, state and county agencies and nonprofit land conservation organizations shall submit applications to the department that contain:

- (1) Contact information for the project;
- (2) A description of the project;
- (3) The request for funding;
- (4) Cost estimates for acquisition of the interest in the land;
- (5) Location and characteristics of the land; ~~[and]~~
- (6) The project's public benefits, including but not limited to where public access may be practicable or not practicable and why;
- (7) Results of the applicant's consultation with the staff of the department, the department of agriculture, the agribusiness development corporation, and the public land development corporation regard-

- ing the maximization of public benefits of the project, where practicable; and
 [(6)] (8) Other similar, related, or relevant information as determined by the department.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

ACT 285

H.B. NO. 2568

A Bill for an Act Relating to Background Checks.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to allow the department of health to designate an entity to perform services on its behalf relating to background checks for employment, volunteer, contracting, licensure, or certification purposes.

SECTION 2. Section 321-15.2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b), (c), (d), (e), (f), and (g) to read:
 - “~~(b)~~ The department shall adopt rules pursuant to chapter 91 to ensure the reputable and responsible character of all prospective applicants, operators, direct patient access employees, and adult volunteers of a healthcare facility, and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients. These rules, among other things, shall specify how the department or the department’s designee may conduct criminal history record checks in accordance with section 846-2.7.
 - (c) All applicants and prospective operators shall:
 - (1) Be subject to criminal history record checks in accordance with section 846-2.7;
 - (2) Authorize the disclosure to the department or the department’s designee of criminal history record information;
 - (3) Sign a waiver form stating that the department or the department’s designee shall not be liable to the applicant or prospective operator; and
 - (4) Consent to be fingerprinted for the purpose of requesting criminal history record information from the Federal Bureau of Investigation and the Hawaii criminal justice data center.
 - (d) All prospective direct patient access employees and adult volunteers of healthcare facilities and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients shall:
 - (1) Consent to be fingerprinted;
 - (2) Provide all necessary information for the purpose of enabling the department or the department’s designee to conduct the criminal history record checks; and
 - (3) Sign a waiver form stating that the department or the department’s designee shall not be liable to the employee or volunteer.

(e) The department or the department's designee may request criminal history record information which includes Federal Bureau of Investigation data through the Hawaii criminal justice data center on all prospective applicants, operators, direct patient access employees, and adult volunteers of healthcare facilities. In addition, in the case of any healthcare facility to be operated in a private residence, the department of health or the department's designee may request criminal history record information which includes Federal Bureau of Investigation data through the Hawaii criminal justice data center for all adults residing in the home who are not clients.

(f) The department or the department's designee shall make a name inquiry into the criminal history records or conduct criminal history record checks of all prospective applicants, operators, direct patient access employees, and adult volunteers at the healthcare facility, and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients.

(g) The department may revoke or suspend a current license, impose penalties or fines, or deny an application for a license under rules adopted pursuant to chapter 91 if the applicant, operator, employee, or adult volunteer at the healthcare facility or, in the case of any healthcare facility operated in a private residence, any adult living in the home other than the client, refuses to authorize the department or the department's designee to conduct a criminal history record check, obtain criminal history record information for verification, or consent to be fingerprinted. In addition, the department may revoke or suspend a current license, impose penalties or fines, or deny an application for a license if the applicant, operator, direct patient access employee, or adult volunteer at the healthcare facility, or, in the case of a healthcare facility operated in a private residence, any adult living in the home other than the client, has any disqualifying information. The department may also revoke or suspend a current license, impose penalties or fines, or deny an application for a license if the department determines, based upon consideration of the criminal history information, that the applicant, operator, direct patient access employee, or adult volunteer at the healthcare facility, or, in the case of a healthcare facility operated in a private residence, any adult living in the home other than the client, is unsuitable to work or live in close proximity to the residents of the healthcare facility such that the health, safety, and welfare of the residents of the healthcare facility could be at risk."

2. By amending subsections (j) and (k) to read:

"(j) The department, or the department's designee, in obtaining and relying upon the criminal history record checks, is presumed to be acting in good faith and shall be immune from civil liability for taking or recommending action based upon the criminal history record information. The good faith presumption may be rebutted upon a showing by the person or entity of a lack of good faith, and proof by a preponderance of the evidence, that the department relied upon information or opinion that it knew was false or misleading.

(k) Any applicant or operator who receives information from the department or the department's designee relating to a criminal history record check of a direct patient access employee or adult volunteer or, in the case of a healthcare facility operated in a private residence, an adult living in the home other than the clients, is presumed to be acting in good faith and shall be immune from civil liability for taking or recommending action based upon the department's recommendation or direction. Nothing in this section shall affect rights, obligations, remedies, liabilities, or standards of proof under chapters 368 and 378.

Criminal history record information shall be used exclusively by the department or the department's designee for the sole purpose of determining

whether an applicant, operator, direct patient access employee, or adult volunteer at a healthcare facility, or, in the case of a facility operated in a private residence, any adult living in the home other than the clients is suitable for working or living in close proximity to residents of a healthcare facility such that the health, safety, and welfare of the residents would not be at risk.”

SECTION 3. Section 321-171.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) Except as otherwise specified, any person who seeks employment with the department of health, or who is employed or seeks employment with a provider or subcontractor in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health services, shall:

- (1) Be subject to criminal history record checks in accordance with section 846-2.7; and
- (2) Provide to the department of health or the department’s designee written consent for the department or the department’s designee to obtain criminal history record information for verification.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the department of health for purposes of determining whether a person is suitable for working in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health services. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.”

2. By amending subsection (d) to read:

“(d) This section shall not be used by the department of health or the department’s designee to secure criminal history record checks on persons who have been employed continuously on a salaried basis prior to July 1, 2000.”

SECTION 4. Section 333F-22, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (c), (d), and (e) to read:

“(c) An applicant to operate an adult foster home or developmental disabilities domiciliary home and all current and prospective employees of the applicant shall be subject to criminal history record checks in accordance with section 846-2.7, and shall provide consent to the department or the department’s designee to obtain criminal history record information for verification.

(d) Each existing provider or provider and all employees hired after the initial licensure or certification of the existing provider or provider shall be subject to criminal history record checks in accordance with section 846-2.7, and shall provide consent to the department or the department’s designee to obtain criminal history record information for verification.

(e) The department or the department’s designee is authorized to obtain criminal history record information through the Hawaii criminal justice data center on existing providers and their employees upon their next licensure or certification renewal date, and on any applicant and all current and prospective employees of the applicant, including all new employees after the applicant is issued a certification or license under this chapter.”

2. By amending subsection (g) to read:

“(g) The department may revoke a current license or certification or deny an application for a license or certification to operate an adult foster home or developmental disabilities domiciliary home under rules adopted pursuant to chapter 91 if the existing provider or employee of an existing provider, applicant,

current or prospective employee of the applicant, provider, or new employee of the provider refuses to submit to the department or the department's designee statements indicating criminal convictions, refuses to provide consent to the department or the department's designee to conduct a criminal history record check or obtain other criminal history record information for verification, refuses to be fingerprinted, has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less; or if the department or the department's designee finds that the criminal history record of the existing provider or employee of an existing provider, applicant, current or prospective employee of the applicant, provider, or new employee of the provider indicates that the individual may pose a risk to the health, safety, or well-being of persons with developmental or intellectual disabilities living in the home."

SECTION 5. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Criminal history record checks may be conducted by:

- (1) The department of health or the department's designee on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health or the department's designee on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health or the department's designee on all applicants for licensure for, operators for, prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for individuals with intellectual disabilities, hospital, rural health center and rehabilitation agency, and, in the case of any of the above facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;

- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees

- that provide home and community-based services under Section 1915(c) of the Social Security Act, Title 42 United States Code Section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
 - (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
 - (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
 - (27) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license; and
 - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,
 as provided by section 489D-9;
 - (28) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
 - (29) The Hawaii health systems corporation on:
 - (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
 - (30) The department of commerce and consumer affairs on:
 - (A) An applicant for a mortgage loan originator license; and
 - (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license,
 as provided by chapter 454F; and
 - (31) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 6. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 6, 2012.)

ACT 286

S.B. NO. 2745

A Bill for an Act Relating to Environment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that according to the *Hawaii Climate Change Action Plan*, published in November 1998 by the State of Hawaii depart-

ment of business, economic development, and tourism's energy, resources, and technology division and the department of health's clean air branch, major climate change effects expected for Hawaii include warmer temperatures; increases in heat-related deaths and illnesses; sea-level rise with resultant flooding, beach erosion, and damage to coastal property; increased vulnerability to storm damage; increasing variability of the effects on water resources; undetermined effects on agriculture and forestry; and stresses on ecosystems.

The 1998 report is consistent with current climate science. According to recent findings by researchers at the University of Hawaii, global warming is evident in Hawaii: air temperature has risen; rain intensity has increased while total rainfall has decreased; stream flows have decreased; sea level and sea surface temperatures have increased; and the ocean is becoming more acidic. Because these trends are likely to continue, (1) scientists anticipate growing impacts to Hawaii's water resources, forests, coastal communities, and marine ecology; (2) it is timely to consider adaptation and mitigation strategies; (3) there is significant need for sustained and enhanced climate monitoring and assessment activities; and (4) there is a compelling requirement for focused research to produce models of future climate changes and impacts.

Hawaii's existing climate change policy focuses primarily on mitigation or the reduction of greenhouse gases. Act 234, Session Laws of Hawaii 2007, established the State's policy framework and requirements to address Hawaii's greenhouse gas emissions, recognizing the potential adverse effects of global climate change to Hawaii's economy, public health, natural resources, and environment. The focus and general purpose of Act 234 was to achieve by January 1, 2020, cost-effective greenhouse gas emission reductions at or below Hawaii's greenhouse gas emission estimates of 1990. Subsequently, the legislature passed Act 73, Session Laws of Hawaii 2010. Act 73 established the environmental response, energy, and food security tax, also known as the barrel tax, which also addresses issues relating to the effects of climate change. One purpose of Act 73 was to help ensure Hawaii's energy and food self-sufficiency and to "[h]elp Hawaii's natural resources and population adapt and be resilient to the inevitable challenges brought on by climate change caused by carbon dioxide and other greenhouse gas emissions from burning fossil fuels."

However, even if greenhouse gas emissions are reduced to 1990 levels, Hawaii will still be significantly impacted by global climate change well into the future. Therefore, this Act focuses on preparing for and adapting to the expected impacts of climate change.

The purpose of this Act is to encourage collaboration and cooperation among county, state, and federal agencies, policy makers, businesses, and other community partners to plan for the impacts of climate change and avoid, minimize, or mitigate loss of life, land, and property of future generations.

In the course of implementing the legislatively mandated ocean resources management plan, the multi-stakeholder ocean resources management plan policy group and working group recognized a need for policy guidance to frame and effectuate a coordinated effort to adapt to the expected impacts of climate change. The ocean resources management plan working group partnered with the center for island climate adaptation and policy at the University of Hawaii to develop *A Framework for Climate Change Adaptation in Hawaii*, dated November 2009. The desired outcome of the process outlined in the *Framework* is for Hawaii to adapt successfully to the impacts of climate change.

In August 2011, the ocean resources management plan policy group and working group along with other stakeholders from academia, business, and native Hawaiian communities, met for a two-day intensive workshop to implement the first steps of the *Framework*, including the development of an effective mea-

sure of Hawaii's adaptation to the impacts of climate change. The results of the workshop and input from the broader community are the foundation of this Act.

This Act amends the Hawaii State Planning Act, chapter 226, Hawaii Revised Statutes, by adding climate change adaptation priority guidelines to part III. Priority guidelines focus state and county resources on major areas of state-wide concern that merit priority attention to improve the quality of life for Hawaii's present and future population through the pursuit of desirable courses of action. The priority guidelines will serve as a guiding policy for adapting to the expected impacts of climate change through the existing implementation provisions of the Hawaii State Planning Act, which include guiding all major state and county activities, programs, budgetary, land use, and other decision making processes, and county general plans and development plans, pursuant to part II of the Hawaii State Planning Act.

SECTION 2. Chapter 226, Hawaii Revised Statutes, is amended by adding to part III a new section to be appropriately designated and to read as follows:

"§226- Climate change adaptation priority guidelines. Priority guidelines to prepare the State to address the impacts of climate change, including impacts to the areas of agriculture; conservation lands; coastal and nearshore marine areas; natural and cultural resources; education; energy; higher education; health; historic preservation; water resources; the built environment, such as housing, recreation, transportation; and the economy shall:

- (1) Ensure that Hawaii's people are educated, informed, and aware of the impacts climate change may have on their communities;
- (2) Encourage community stewardship groups and local stakeholders to participate in planning and implementation of climate change policies;
- (3) Invest in continued monitoring and research of Hawaii's climate and the impacts of climate change on the State;
- (4) Consider native Hawaiian traditional knowledge and practices in planning for the impacts of climate change;
- (5) Encourage the preservation and restoration of natural landscape features, such as coral reefs, beaches and dunes, forests, streams, floodplains, and wetlands, that have the inherent capacity to avoid, minimize, or mitigate the impacts of climate change;
- (6) Explore adaptation strategies that moderate harm or exploit beneficial opportunities in response to actual or expected climate change impacts to the natural and built environments;
- (7) Promote sector resilience in areas such as water, roads, airports, and public health, by encouraging the identification of climate change threats, assessment of potential consequences, and evaluation of adaptation options;
- (8) Foster cross-jurisdictional collaboration between county, state, and federal agencies and partnerships between government and private entities and other non-governmental entities, including nonprofit entities;
- (9) Use management and implementation approaches that encourage the continual collection, evaluation, and integration of new information and strategies into new and existing practices, policies, and plans; and

- (10) Encourage planning and management of the natural and built environments that effectively integrate climate change policy.”

SECTION 3. Section 226-102, Hawaii Revised Statutes, is amended to read as follows:

“§226-102 **Overall direction.** The State shall strive to improve the quality of life for Hawaii’s present and future population through the pursuit of desirable courses of action in ~~[six]~~ seven major areas of statewide concern which merit priority attention: economic development, population growth and land resource management, affordable housing, crime and criminal justice, quality education, ~~[and]~~ principles of sustainability[-], and climate change adaptation.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 287

S.B. NO. 2402

A Bill for an Act Relating to Light Pollution.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the night sky is a tremendously valuable natural and cultural resource for the residents of Hawaii, and for visitors to Hawaii. The dark night sky has tremendous scientific value for astronomy, and is vitally important for wildlife in Hawaii including birds and turtles. Mauna Kea, on the island of Hawaii, is the best astronomical observatory site in the northern hemisphere, and arguably the best site on Earth. Haleakala on the island of Maui is also a world-class astronomical observatory site.

Unnecessary light pollution is threatening the dark night sky over the Hawaiian Islands. This light pollution includes sky glow, energy waste, glare, light trespass, visual confusion, and environmental harm. Light can travel enormous distances through the Earth’s atmosphere, and therefore does not respect county boundaries. Light pollution spreads across the entire State and must be addressed using statewide legislation. Furthermore, endangered species that are affected by light at night live on many of the Hawaiian Islands.

Many of the problems with light pollution that Hawaii faces are caused by improperly shielded lights. Poorly shielded lights direct energy straight into the atmosphere, where it is wasted. This light produces sky glow, which limits residents’ ability to see stars. For example, in Honolulu only about the brightest twenty stars are visible, whereas about two thousand stars can be seen from a dark location. Poorly shielded lights also cause glare, which diminishes a person’s ability to see at night. Poorly shielded lights also enter locations where the light is unwanted (light trespass), including bedrooms, making it difficult for residents to sleep. Excessive light in the sleeping environment has recently been linked to an increased incidence of breast cancer. Improperly shielded lights on

the island of Kauai have led to many bird deaths, particularly of the endangered Newell's shearwater.

Act 161, Session Laws of Hawaii 2009, formed a temporary advisory committee to assist the department of business, economic development, and tourism to develop a statewide starlight reserve strategy to preserve the quality of the night sky and its associated cultural, scientific, astronomical, natural, and landscape-related values. The temporary advisory committee recommended the enactment of certain measures in the 2012 regular session to conserve energy and promote responsible use of light.

The purpose of this Act (hereinafter to also be known as the Hawaii Night Sky Protection Act) is to implement the recommended legislation of the temporary advisory committee established pursuant to Act 161. It is not the intent of this Act to require the realignment or relocation of any existing light poles.

SECTION 2. Chapter 201, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§201- Night sky protection strategy. (a) Beginning July 1, 2014, all state agencies shall comply with shielded lighting fixture requirements under this section, whereby, except as specified otherwise in subsections (c) through (f), every new outdoor lamp light fixture emitting more than three thousand lumens shall be required to be fully shielded and to have a correlated color temperature of four thousand Kelvin or less; provided that the impact of artificial light on shoreline and ocean waters shall be subject to compliance with section 205A-71. A lighting fixture is considered to be fully shielded when the lighting fixture is shielded in such a manner that all light rays emitted by the fixture, either directly from the lamp, or indirectly from the fixture, are projected below a horizontal plane running through the lowest point of the fixture.

(b) No new mercury vapor lamps shall be sold or installed after July 1, 2014.

(c) As applicable, retrofit work or replacement of existing lighting fixtures shall:

(1) Limit the rated correlated color temperature of emitted light (lamp, fixture, and filter if used) to less than or equal to four thousand Kelvin, except in the case of outdoor athletic facilities as described in subsection (d);

(2) Not be subject to the shielding requirement for lamp-by-lamp replacement work; and

(3) Require one hundred per cent fully shielded lighting fixtures be installed if more than fifty per cent of existing nonconforming lighting fixtures need to be replaced.

(d) For outdoor athletic facilities, fully shielded lighting fixtures with correlated color temperatures less than or equal to four thousand Kelvin are preferred, but not required. Where fully shielded lighting fixtures are not used, acceptable luminaries shall include light fixtures that are:

(1) Equipped with internal, external, or internal and external glare control louvers and are installed so as to limit direct up-light to less than five per cent of the total lumens exiting from the installed fixtures and minimize offsite light trespass; and

(2) Installed and maintained with minimum aiming angles of twenty-five degrees downward from the horizontal; provided that the aiming angle shall be measured from the axis of the luminaire maximum beam candlepower, as certified by an independent testing agency.

(e) Fully shielded replacement lighting fixtures for state managed roadways and highways shall be installed on a case-by-case basis, subject to the availability of capital improvement project funding and compliance with applicable federal, state, or county design standards or guidelines. Where fully shielded fixtures are not used, acceptable luminaires shall be partially shielded lights that emit no more than five per cent of their light above the horizontal plane, as certified by an independent testing agency.

(f) The use of existing nonconforming lighting fixtures shall be allowed, subject to compliance with subsection (c)(3), for:

- (1) Lighting fixtures that are extinguished between the hours of 11:00 p.m. and sunrise by an automatic shutoff device; or
- (2) Outdoor amphitheaters, ballparks, playfields, play courts, or other similar recreational facilities, whether public or private, that are used for international, national, state, or county tournaments; or as needed to conclude any recreational event, sporting event, or other related clean up activity that is in progress prior to 11:00 p.m. at the amphitheater, ballpark, playfield, play court, or similar recreational facility.

(g) The following light sources shall be exempt from this section:

- (1) Lighting sources emitting three thousand lumens or less, which is comparable to a lighting fixture with an incandescent lamp rated at one hundred fifty watts or less, and temporary ornamental holiday lights;
- (2) Emergency lighting used by military, national guard, police, firefighters, correctional, medical, or hazardous material mitigation personnel, or other emergency responders for the duration of the emergency;
- (3) Temporary outdoor lighting used for construction or major renovation of buildings or for highway improvements or construction;
- (4) Temporary outdoor lighting used for film production and other permitted activities such as carnivals and concerts;
- (5) Temporary outdoor lighting used for agricultural operations;
- (6) Navigational lights that are required for waterway, open ocean, and aircraft safety;
- (7) Existing outdoor lighting fixtures that were legally installed prior to July 1, 2014, subject to compliance with subsection (c)(3);
- (8) Outdoor lighting fixtures that are necessary for compliance with applicable federal, state, or county design standards or guidelines that are related to health and safety for the general public;
- (9) Upwards facing lighting fixtures used to illuminate buildings, monuments, statues, memorial structures, national or state flags, and other selected facilities or features that were legally installed prior to July 1, 2014, or that will result in the generation of three thousand lumens or less, as certified by an independent testing agency; and
- (10) Refurbishment, repair, or replacement-in-kind of lighting fixtures that are character-defining features of a historic property, as determined by the department of land and natural resources historic preservation division.

(h) This section shall be considered to be supplemental to any adopted county lighting ordinances and shall not be construed to supersede or modify county lighting ordinances or rules; provided that the county ordinance is not less restrictive than this section; and provided further that this section shall not apply to counties with populations of less than one hundred thousand persons."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 288

H.B. NO. 2806

A Bill for an Act Relating to Native Hawaiians.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that, over the past two hundred years, Hawaii has experienced extensive changes. These changes include the deterioration of the Hawaiian culture, language, values, and land tenure system, which have in part resulted in the over-development of the coastline, alteration of fresh water streams, destruction of life-giving watersheds, decimation of the coral reefs, and the decline of endemic marine and terrestrial species.

Native Hawaiian culture has knowledge that has been passed on for generations and is still practiced for the purpose of perpetuating traditional protocols, caring for and protecting the environment, and strengthening cultural and spiritual connections. It is through the aha moku councils that native Hawaiians protected their environment and sustained the abundance of resources that they depended upon for thousands of years.

Currently, many Hawaiian communities are becoming revitalized by using the knowledge of cultural practitioners that was passed down through kupuna, experienced farmers, and fishers to engage and enhance sustainability, subsistence, and self-sufficiency. Furthermore, many native Hawaiian communities are interested, concerned, involved, willing, and able to advise government agencies, organizations, and other interested groups in integrating traditional knowledge and ahupuaa management practices.

The legislature further finds that on August 15 through 17, 2006, the Hoohanohano I Na Kupuna Puwalu series began and native Hawaiian cultural and traditional practitioners who are versed in farming and fishing, ocean, and land ahupuaa methods gathered to discuss and bring forth the wisdom of the kupuna and ancestors. It was a gathering of empirical knowledge handed down from generation to generation on traditional fishing, agriculture, streams, fishponds, and land use methodology based on the ahupuaa system.

Representatives from forty-three regions (moku) in the State and over one hundred ahupuaa Hawaiian cultural practitioners, including kupuna and the acknowledged traditional experts, joined together to come forth with their manao and concerns.

The conclusion of Puwalu Ekahi called for the creation of a resolution calling on native Hawaiians to begin a process to uphold and continue Hawaiian traditional land and ocean practices. Perpetuating and preserving the knowledge of the practitioners through the continuation of konohiki management, the

kapu system, and the creation of an aha moku and the ahupuaa management system was the consensus of Puwalu Ekahi.

On November 8 and 9, 2006, Puwalu Elua brought together educators, administrators, cultural practitioners, and kupuna to discuss the values and the spiritual connection between natural resources and native Hawaiians; the ahupuaa concept; generational knowledge and learning; the importance of place names and moolelo; seasonal closures and lunar calendars; fishing practices; the Northwestern Hawaiian islands; konohiki connections; marine protected areas; upena (nets); place-based kapu; limu; and puuhonua concepts that could be developed as an educational framework to integrate this knowledge into a curricula for all public, private, charter, and Hawaiian immersion schools in Hawaii.

On December 19 and 20, 2006, Puwalu Ekolu brought together major policymakers and stakeholders involved in the protection of the Hawaii ecosystem. Native Hawaiian practitioners and experts in traditional methods of sustainability, government policymakers, including members of the legislature, agency directors, environmental groups, educational leaders, and Hawaiian community organizations, discussed existing programs and their successes and failures in community-building.

In conclusion, it was agreed that statutes, ordinances, and a framework for community consultation using the Hawaiian perspective and traditional methods such as the ahupuaa management system are needed, and the aha moku system should be established.

Between 2006 and 2010, three more puwalu were convened to gather additional community input on best practices in the area of native Hawaiian resource management. All puwalu were open to the public and included farmers, fishers, environmentalists, educators, organizations and agencies, and governmental representatives who, through discussions on the integration of these practices into regulation and common utilization, came to the consensus of the necessity of integrating the aha moku system into government policy. The information gathered from all puwalu has been compiled into annual comprehensive reports to the legislature as required by Act 212, Session Laws of Hawaii 2007, as amended by Act 39, Session Laws of Hawaii 2009.

The purpose of this Act is to formally recognize the aha moku system and to establish the aha moku advisory committee within the department of land and natural resources, which may serve in an advisory capacity to the chairperson of the board of land and natural resources. The aha moku advisory committee may advise on issues related to land and natural resources management through the aha moku system, a system of best practices that is based upon the indigenous resource management practices of moku (regional) boundaries, which acknowledges the natural contours of land, the specific resources located within those areas, and the methodology necessary to sustain resources and the community. The aha moku system will foster understanding and practical use of knowledge, including native Hawaiian methodology and expertise, to assure responsible stewardship and awareness of the interconnections of the clouds, forests, valleys, land, streams, fishponds, and sea. The moku system will include the use of community expertise and establish programs and projects to improve communication, provide training on stewardship issues throughout the region (moku), and increase education. The establishment of this committee does not preclude any person's or organization's right to provide advice to the department of land and natural resources.

SECTION 2. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- Aha moku advisory committee; established. (a) There is established the aha moku advisory committee to be placed within the department of land and natural resources for administrative purposes. The committee may advise the chairperson of the board of land and natural resources in carrying out the purposes of this section.

(b) The committee shall consist of eight members appointed by the governor and confirmed by the senate from a list of nominations submitted by the aha moku councils of each island. Oversight of the aha moku advisory committee shall be by the chairperson of the board of land and natural resources. The committee members shall select the committee chairperson from among the members.

(c) The members shall not receive compensation for their service, but shall be reimbursed for necessary expenses, including travel expenses, incurred while participating in meetings and events approved in advance by the chairperson of the board of land and natural resources.

The aha moku advisory committee may hire an executive director who shall be exempt from chapter 76. The executive director may hire an administrative or executive assistant to assist the executive director in accomplishing the purposes of the aha moku advisory committee.

(d) The aha moku advisory committee may provide advice on the following:

- (1) Integrating indigenous resource management practices with western management practices in each moku;
- (2) Identifying a comprehensive set of indigenous practices for natural resource management;
- (3) Fostering the understanding and practical use of native Hawaiian resource knowledge, methodology, and expertise;
- (4) Sustaining the State’s marine, land, cultural, agricultural, and natural resources;
- (5) Providing community education and fostering cultural awareness on the benefits of the aha moku system;
- (6) Fostering protection and conservation of the State’s natural resources; and
- (7) Developing an administrative structure that oversees the aha moku system.

(e) The committee shall submit an annual report in English and Hawaiian to the legislature and the chairperson of the board of land and natural resources no later than twenty days prior to the convening of each regular legislative session. The annual report shall include a list of all recommendations made by the committee and the resulting action taken by the department over the course of the prior year.”

SECTION 3. There is appropriated out the general revenues of the State of Hawaii the sum of \$76,500 or so much thereof as may be necessary for fiscal year 2012-2013 for the administrative costs related to carrying out the duties of the aha moku advisory committee.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 289

H.B. NO. 2682

A Bill for an Act Relating to Commercial Activities on Ocean Waters.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to authorize the department of land and natural resources to regulate commercial enterprises that operate out of private marinas and use state waters or marine resources. It is not the intent of this Act to provide for additional regulation of existing regulated commercial enterprises, but to address currently unregulated activities only.

SECTION 2. Section 200-3, Hawaii Revised Statutes, is amended to read as follows:

“[§200-3] Ocean recreation and coastal areas programs. The board shall assume the following functions of the department of transportation:

- (1) Managing and administering the ocean-based recreation and coastal areas programs of the State;
- (2) Planning, developing, operating, administering, and maintaining small boat harbors, launching ramps, and other boating facilities and associated aids to navigation throughout the State;
- (3) Developing and administering an ocean recreation management plan;
- (4) Administering and operating a vessel registration system for the State;
- (5) Regulating the commercial use of [boating facilities] state waters and marine resources, including operations originating from private marinas;
- (6) Regulating boat regattas and other ocean water events;
- (7) Administering a marine casualty and investigation program;
- (8) Assisting in abating air, water, and noise pollution;
- (9) Conducting public education in boating safety;
- (10) Administering the boating special fund;
- (11) Assisting in controlling shoreline erosion;
- (12) Repairing seawalls and other existing coastal protective structures under the jurisdiction of the State; and
- (13) Removing nonnatural obstructions and public safety hazards from the shoreline, navigable streams, harbors, channels, and coastal areas of the State.”

SECTION 3. Section 200-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The chairperson may adopt rules necessary:

- (1) To regulate the manner in which all vessels may enter the ocean waters and navigable streams of the State and moor, anchor, or dock at small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;
- (2) To regulate the embarking and disembarking of passengers at small boat harbors, launching ramps, other boating facilities, and public beaches;
- (3) For the safety of small boat harbors, launching ramps, and other boating facilities, and the vessels anchored or moored therein;
- (4) For the conduct of the public using small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;

- (5) To regulate and control recreational and commercial use of small boat harbors, launching ramps, and other boating facilities owned or controlled by the State and the ocean waters and navigable streams of the State;
- (6) To prevent the discharge or throwing into small boat harbors, launching ramps, other boating facilities, ocean waters, and navigable streams, of rubbish, refuse, garbage, or other substances likely to affect the quality of the water or that contribute to making the small boat harbors, launching ramps, other boating facilities, ocean waters, and streams unsightly, unhealthful, or unclear, or that are liable to fill up, shoal, or shallow the waters in, near, or affecting small boat harbors, launching ramps, and other boating facilities and the ocean waters and navigable streams of the State, and likewise to prevent the escape of fuel or other oils or substances into the waters in, near, or affecting small boat harbors, launching ramps, or other boating facilities and the ocean waters and navigable streams of the State from any source point, including[;] but not limited to[;] any vessel or from pipes or storage tanks upon land~~[-The rules may include:]~~, including:
 - (A) Requirements for permits and fees for:
 - (i) The mooring, docking, or anchoring of recreational and commercial vessels or the launching of recreational or commercial vessels at small boat harbors, launching ramps, and other boating facilities; or
 - (ii) Other uses of these facilities;
 - (B) Requirements for permits and fees for use of a vessel as a principal place of habitation while moored at a state small boat harbor;
 - (C) Requirements governing:
 - (i) The transfer of any state commercial, mooring, launching, or any other type of use or other permit, directly or indirectly, including[;] but not limited to[;] the imposition or assessment of a business transfer fee upon transfer of ownership of vessels operating commercially from, within or in any way related to the state small boat harbors; and
 - (ii) The use of state small boat harbors, launching ramps, or other boating facilities belonging to or controlled by the State, including[;] but not limited to[;] the establishment of minimum amounts of annual gross receipts required to renew a commercial use permit, and conditions under which a state commercial, mooring, launching, or any other type of use or other permit may be terminated, canceled, or forfeited; and
 - (D) Any other rule necessary to implement this chapter pertaining to small boat harbors, launching ramps, and other boating facilities belonging to or controlled by the State;
- (7) To continue the ocean recreational and coastal areas programs and govern the ocean waters and navigable streams of the State, and beaches encumbered with easements in favor of the public to protect and foster public peace and tranquility and to promote public safety, health, and welfare in or on the ocean waters and navigable streams of the State, and on beaches encumbered with easements in favor of the public~~[-The rules may include:]~~, including:

- (A) Regulating the anchoring and mooring of vessels, houseboats, and other contrivances outside of any harbor or boating facility, including:
 - (i) The designation of offshore mooring areas;
 - (ii) The licensing and registration of vessels, houseboats, and other contrivances; and the issuance of permits for offshore anchoring and mooring of vessels, houseboats, and other contrivances; and
 - (iii) The living aboard on ~~[such]~~ vessels, houseboats, or other contrivances while they are anchored or moored within ocean waters or navigable streams of the State.

The rules shall provide for consideration of environmental impacts on the State's aquatic resources in the issuance of any permits for offshore mooring;
- (B) Safety measures, requirements, and practices in or on the ocean waters and navigable streams of the State;
- (C) The licensing and registration of persons or organizations engaged in commercial activities in or on the ocean waters and navigable streams of the State;
- (D) The licensing and registration of equipment utilized for commercial activities in or on the ocean waters and navigable streams of the State;
- (E) For beaches encumbered with easements in favor of the public, the prohibition or denial of the following uses and activities:
 - (i) Commercial activities;
 - (ii) The storage, parking, and display of any personal property;
 - (iii) The placement of structures or obstructions;
 - (iv) The beaching, landing, mooring, or anchoring of any vessels; and
 - (v) Other uses or activities that may interfere with the public use and enjoyment of these beaches; and
- (F) Any other matter relating to the safety, health, and welfare of the general public; ~~[and]~~
- (8) To regulate the examination, guidance, and control of harbor agents and their assistants~~[-]; and~~
- (9) To regulate commercial activities in state waters including operations originating from private marinas; provided that no new or additional permits shall be required for those commercial activities regulated by any other chapter.

For the purposes of this paragraph:

"Commercial activity" means to engage in any action or attempt to engage in any action for compensation in any form. The action or actions may include providing or attempting to provide guide services, charters, tours, and transportation to and from the location or locations for which such services are provided.

"Compensation" means money, barter, trade, credit, and other instruments of value, goods, and other forms of payment."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved July 9, 2012.)

A Bill for an Act Relating to Family Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Since becoming the State's only daily newspaper of general circulation, the Honolulu Star-Advertiser has increased classified rates for legal notices more than five hundred per cent. Weekday rates have increased from \$9.75 to \$65 and Sunday rates have increased from \$11 to \$75. Additionally, over the past ten years, newspaper circulation nationwide has decreased, leading to fewer people reading the classifieds.

The legislature finds that the increase in legal classified rates has placed a burden on impoverished litigants who are unable to locate the opposing party and must serve notice of a proceeding by purchasing a legal classified. The dramatic price increase in the cost to publish legal notices combined with the decrease in printed newspaper readership has made the practice of service by publication obsolete for family court cases involving impoverished litigants.

The purpose of this Act is to allow impoverished family court litigants an alternative to serving notice by publication, by allowing the posting of pleadings at the courthouse. This Act allows family court plaintiffs or petitioners who are unable to afford to serve notice by publication to serve notice to a defendant or respondent by, after a due and diligent search for the defendant or respondent, mailing pleadings and process to the defendant or respondent and to the defendant's or respondent's closest known relative, and posting pleadings and process at the courthouse with the permission of the family court.

SECTION 2. Section 601-13, Hawaii Revised Statutes, is amended to read as follows:

"§601-13 Publication of notices and process. (a) All notices or process required or permitted by law, by the rules of any court, or by judicial order to be published or advertised in judicial proceedings in the State shall be published or advertised in a newspaper or newspapers having a general circulation within the county in which the judicial proceedings are commenced or had, except as otherwise provided.

(b) When the notices or process are required to be published or advertised once or more in a given interval for or in a successive number of [such] intervals, the use of the word[, "successive,"] "successive" shall not be construed to require publication in more than the stated number of intervals; for example, a requirement of publication "once a week for (or in) three successive [weeks,]" weeks" shall require [but] only three publications.

(c) Notwithstanding any law to the contrary, in all family court cases, if the plaintiff or petitioner, as a result of impoverishment, is unable to publish notice as required by subsection (a), the plaintiff or petitioner shall file an affidavit attesting to impoverishment and to the fact that, after due and diligent search, the whereabouts of the individual sought to be served are unknown. Upon such filings, the family court shall order that service be made by forwarding a certified copy of the pleadings and process to the individual at the last known address by registered or certified mail, with a return receipt requested and a directive to deliver to addressee only, by sending a certified copy of the pleadings and process to the defendant's or respondent's closest known relative, if any can be found, and by posting a copy of the pleadings and process at the courthouse in which the pleadings and process have been filed. Service shall be completed thirty days after mailing. The plaintiff or petitioner shall attest to the fact of the mailing

and the date thereof by affidavit, attaching the sender's receipt for that mail and, if available, the return receipt and envelope."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on September 1, 2012.

(Approved July 9, 2012.)

ACT 291

H.B. NO. 2686

A Bill for an Act Relating to Civil Liability.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§663- Exemption for providing emergency access to land, shelter, and subsistence during a disaster. (a) Any owner of private property who in good faith provides emergency access to land, shelter, or subsistence, including food and water, to a person during a disaster without remuneration or expectation of remuneration, shall be exempt from civil liability for any injury or damage suffered by the person that resulted from the owner providing such emergency access to land, shelter, or subsistence, unless the injury or damage was caused by the gross negligence or intentional or wanton acts or omissions of the owner.

(b) For the purposes of this section:

"Disaster" means a nonroutine event that exceeds the capacity of persons in the affected area to respond to it in such a way as to save lives, preserve property, or to maintain the social, ecological, economic, or political stability of the affected area.

"Emergency" means a situation in which the life or health of a person is in jeopardy due to a disaster requiring immediate assistance.

"Owner" means the possessor of a fee interest, or a tenant, lessee, occupant, person, group, club, partnership, family, organization, entity, or corporation that has control, possession, or use of the land, and its members, agents, partners, representatives, shareholders, and employees."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Homicide.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-124, Hawaii Revised Statutes, is amended to read as follows:

“§286-124 Mandatory revocation of license by a court. Any court of competent jurisdiction shall forthwith revoke the license of any driver upon a conviction of the driver of manslaughter or for negligent homicide in the first or second degrees resulting from the operation of a motor vehicle. The period of revocation shall be determined by the court at sentencing.”

SECTION 2. Section 286-126, Hawaii Revised Statutes, is amended to read as follows:

“§286-126 Period of suspension or revocation. Unless otherwise provided by law, a court of competent jurisdiction shall not suspend a license for a longer period than five years; and when a court has revoked a license, the ~~examiner of drivers shall not in any event grant an application for a new license until the expiration of one year after the date of the revocation.~~ person whose license was revoked may not apply for, and the examiner of drivers may not grant, a new driver's license until the expiration of the period of revocation determined by the court.”

SECTION 3. Section 706-624, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Discretionary conditions. The court may provide, as further conditions of a sentence of probation, to the extent that the conditions are reasonably related to the factors set forth in section 706-606 and to the extent that the conditions involve only deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 706-606(2), that the defendant:

- (a) Serve a term of imprisonment to be determined by the court at sentencing in class A felony cases under section 707-702, not exceeding two years in class A felony cases under part IV of chapter 712, not exceeding eighteen months in class B felony cases, not exceeding one year in class C felony cases, not exceeding six months in misdemeanor cases, and not exceeding five days in petty misdemeanor cases; provided that notwithstanding any other provision of law, any order of imprisonment under this subsection that provides for prison work release shall require the defendant to pay thirty per cent of the defendant's gross pay earned during the prison work release period to satisfy any restitution order. The payment shall be handled by the adult probation division and shall be paid to the victim on a monthly basis;
- (b) Perform a specified number of hours of services to the community as described in section 706-605(1)(d);
- (c) Support the defendant's dependents and meet other family responsibilities;
- (d) Pay a fine imposed pursuant to section 706-605(1)(b);

- (e) Work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip the defendant for suitable employment;
- (f) Refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the crime or engage in the specified occupation, business, or profession only to a stated degree or under stated circumstances;
- (g) Refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons, including ~~[but not limited to]~~ the victim of the crime, any witnesses, regardless of whether they actually testified in the prosecution, law enforcement officers, co-defendants, or other individuals with whom contact may adversely affect the rehabilitation or reformation of the person convicted;
- (h) Refrain from use of alcohol or any use of narcotic drugs or controlled substances without a prescription;
- (i) Refrain from possessing a firearm, ammunition, destructive device, or other dangerous weapon;
- (j) Undergo available medical or mental health treatment, including treatment for substance abuse dependency, and remain in a specified facility if required for that purpose;
- (k) Reside in a specified place or area or refrain from residing in a specified place or area;
- (l) Submit to periodic urinalysis or other similar testing procedure;
- (m) Refrain from entering specified geographical areas without the court's permission;
- (n) Refrain from leaving the person's dwelling place except to go to and from the person's place of employment, the office of the person's physician or dentist, the probation office, or any other location as may be approved by the person's probation officer pursuant to court order. As used in this paragraph, "dwelling place" includes the person's yard or, in the case of condominiums, the common elements;
- (o) Comply with a specified curfew;
- (p) Submit to monitoring by an electronic monitoring device; or
- (q) Satisfy other reasonable conditions as the court may impose."

SECTION 4. Section 706-659, Hawaii Revised Statutes, is amended to read as follows:

"§706-659 Sentence of imprisonment for class A felony. Notwithstanding part II; sections 706-605, 706-606, 706-606.5, 706-660.1, 706-661, and 706-662; and any other law to the contrary, a person who has been convicted of a class A felony, except class A felonies defined in chapter 712, part IV, or section 707-702, shall be sentenced to an indeterminate term of imprisonment of twenty years without the possibility of suspension of sentence or probation. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669. A person who has been convicted of a class A felony defined in chapter 712, part IV, or section 707-702, may be sentenced to an indeterminate term of imprisonment, except as provided for in section 706-660.1 relating to the use of firearms in certain felony offenses and section 706-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be twenty years. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

ACT 293

H.B. NO. 1788

A Bill for an Act Relating to Computer Crime.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to part IX to be appropriately designated and to read as follows:

“§708- Computer fraud in the third degree. (1) A person commits the offense of computer fraud in the third degree if the person knowingly accesses a computer, computer system, or computer network with the intent to commit the offense of theft in the third or fourth degree.

(2) Computer fraud in the third degree is a class C felony.”

SECTION 2. Section 708-891, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§708-891]]~~ Computer fraud in the first degree. (1) A person commits the offense of computer fraud in the first degree if the person knowingly~~], and with intent to defraud,~~ accesses a computer without authorization and, by means of such conduct, obtains or exerts control over the property of another.

(2) ~~In a prosecution for computer fraud in the first degree, it is a defense that the object of the fraud and the property obtained consists only of the use of the computer and the value of such use is not more than \$300 in any one year period.]~~ accesses a computer, computer system, or computer network with the intent to commit the offense of theft in the first degree.

~~[(3)]~~ (2) Computer fraud in the first degree is a class [B] A felony.”

SECTION 3. Section 708-891.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§708-891.5]]~~ Computer fraud in the second degree. (1) A person commits the offense of computer fraud in the second degree if the person knowingly~~], and with the intent to defraud, transfers, or otherwise disposes of, to another, or obtains control of, with the intent to transfer or dispose of, any password or similar information through which a computer, computer system, or computer network may accessed.]~~ accesses a computer, computer system, or computer network with the intent to commit the offense of theft in the second degree.

(2) Computer fraud in the second degree is a class [C] B felony.”

SECTION 4. Section 708-895.5, Hawaii Revised Statutes, is amended to read as follows:

“[H§708-895.5]] Unauthorized computer access in the first degree. (1)

A person commits the offense of unauthorized computer access in the first degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information, and:

- (a) The offense was committed for the purpose of commercial or private financial gain;
- (b) The offense was committed in furtherance of any other crime;
- (c) The value of the information obtained exceeds [~~\$5,000;~~] \$20,000; or
- (d) The information has been determined by statute or rule of court to require protection against unauthorized disclosure.

(2) Unauthorized computer access in the first degree is a class [~~B~~] A felony.”

SECTION 5. Section 708-895.6, Hawaii Revised Statutes, is amended to read as follows:

“[H§708-895.6]] Unauthorized computer access in the second degree. (1)

A person commits the offense of unauthorized computer access in the second degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information.

(2) Unauthorized computer access in the second degree is a class [~~C~~] B felony.”

SECTION 6. Section 708-895.7, Hawaii Revised Statutes, is amended to read as follows:

“[H§708-895.7]] Unauthorized computer access in the third degree. (1)

A person commits the offense of unauthorized computer access in the third degree if the person knowingly accesses a computer, computer system, or computer network without authorization.

(2) Unauthorized computer access in the third degree is a [~~misdemeanor;~~] class C felony.”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Government.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding two new sections to part X to be appropriately designated and to read as follows:

“§46- Relief from retaliatory actions. (a) Notwithstanding any law to the contrary, any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment, contract, or agency relationship because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under section 46-175 or other efforts to stop or address any conduct described in section 46-171(a).

(b) Relief under subsection (a) shall include reinstatement with the same seniority status that the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney’s fees. An action for relief from retaliatory actions under subsection (a) may be brought in the appropriate court of this State for the relief provided in this part.

(c) An action for relief from retaliatory actions under subsection (a) shall be brought within three years of the retaliatory conduct upon which the action is based.

§46- Certain actions barred. (a) In no event may a person bring an action under this part that is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which a county is already a party.

(b) The court shall dismiss an action or claim under this part, unless opposed by a county, if the allegations or transactions alleged in the action or claim are substantially the same as those publicly disclosed:

- (1) In a criminal, civil, or administrative hearing in which a county or its agent is a party;
- (2) In a county council or other county report, hearing, audit, or investigation; or
- (3) By the news media,

unless the action is brought by the county attorney or the person bringing the action is an original source of the information.

(c) For purposes of this section, “original source” means an individual who:

- (1) Prior to public disclosure under subsection (b), has voluntarily disclosed to a county the information on which the allegations or transactions in a claim are based; or
- (2) Has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has volun-

tarily provided the information to a county before filing an action under this part.”

SECTION 2. Section 46-171, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:
 - “(a) Any person who:
 - (1) Knowingly presents, or causes to be presented, ~~[to an officer or employee of a county]~~ a false or fraudulent claim for payment or approval;
 - (2) Knowingly makes, uses, or causes to be made or used, a false record or statement ~~[to get a false or fraudulent claim paid or approved by a county;]~~ material to a false or fraudulent claim;
 - ~~[(3) Conspires to defraud a county by getting a false or fraudulent claim allowed or paid;~~
 - ~~[(4) (3) as~~ possession, custody, or control of property or money used, or to be used, by a county and, intending to defraud a county or ~~[wilfully]~~ to wilfully conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
 - ~~[(5) (4) Is authorized to make or deliver a document certifying receipt of property used, or to be used by a county and, intending to defraud a county, makes or delivers the receipt without completely knowing that the information on the receipt is true;~~
 - ~~[(6) (5) Buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of a county that the person knows [may] is not lawfully authorized to sell or pledge the property;~~
 - ~~[(7) (6) Knowingly makes, uses, or causes to be made or used, a false record or statement [to conceal, avoid, or decrease] material to an obligation to pay or transmit money or property to a county, or knowingly conceals, or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a county; [or~~
 - ~~[(8) (7) Is a beneficiary of an inadvertent submission of a false claim to a county, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the county within a reasonable time after discovery of the false claim; or~~
 - (8) Conspires to commit any of the conduct described in this subsection.

shall be liable to the county for a civil penalty of not less than ~~[\$5,000]~~ \$5,500 and not more than ~~[\$10,000;]~~ \$11,000, plus three times the amount of damages that the county sustains due to the act of that person.”

2. By amending subsection (e) to read:

“(e) For purposes of this section:

“Claim” ~~[includes]~~ means any request or demand, whether under a contract or otherwise, for money or property, and whether or not a county has title to the money or property, that is presented to an officer, employee, or agent of the county or is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the county's behalf or to advance a county program or interest, and if the county provides or has provided any portion of the money or property that is requested or demanded[, or if the government] or will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. “Claim” shall not include requests or demands for money or property that a county has paid to an individual

as compensation for employment or as an income subsidy with no restrictions on that individual's use of the money or property.

"Knowing" and "knowingly" means that a person, with respect to information:

- (1) Has actual knowledge of the information;
 - (2) Acts in deliberate ignorance of the truth or falsity of the information; or
 - (3) Acts in reckless disregard of the truth or falsity of the information;
- and no proof of specific intent to defraud is required.

"Material" means having the tendency to influence or capability to influence the payment or receipt of money or property.

"Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute, regulation, or administrative rule, or from the retention of any overpayment."

SECTION 3. Section 46-177, Hawaii Revised Statutes, is amended to read as follows:

"[H]§46-177[H] Awards to qui tam plaintiffs. (a) If a county proceeds with an action brought by a person under section 46-175, the person shall receive at least fifteen per cent but not more than twenty-five per cent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award sums as it considers appropriate, but in no case more than ten per cent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this subsection shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(b) If a county proceeds with an action brought under section 46-171, the county may file its own complaint or amend the complaint of a person who has brought an action under section 46-171 to clarify or add detail to the claims in which the county is intervening and to add any additional claims with respect to which the county contends it is entitled to relief. For statute of limitations purposes, any such pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the county arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

[(b)] (c) If the county does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five per cent and not more than thirty per cent of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

~~[(e)]~~ (d) Regardless of whether the county proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 46-171 upon which the action was brought, then the court, to the extent the court considers appropriate, may reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of section 46-171, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the county to continue the action.

~~[(d)]~~ (e) If the county does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was frivolous, vexatious, or brought primarily for purposes of harassment.

~~[(e)]~~ (f) In no event may a person bring an action under section 46-175:

- (1) Against any elected official of the county, if the action is based on evidence or information known to the county. For purposes of this section, evidence or information known only to the person or persons against whom an action is brought shall not be considered to be known to the county;
- ~~[(2) When the person is a present or former employee of the county and the action is based upon information discovered by the employee during the course of the employee's employment, unless the employee first, in good faith, exhausted any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the county failed to act on the information provided within a reasonable period of time;]~~ or
- ~~[(3)]~~ (2) That is based upon allegations or transactions that are the subject of a ~~[civil or criminal investigation by the county,]~~ civil suit[,] or an administrative civil money penalty proceeding in which the county is already a party."

SECTION 4. Section 46-178, Hawaii Revised Statutes, is repealed.

PART II

SECTION 5. Chapter 661, Hawaii Revised Statutes, is amended by adding two new sections to part II to be appropriately designated and to read as follows:

"§661- Relief from retaliatory actions. (a) Notwithstanding any law to the contrary, any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment, contract, or agency relationship because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under section 661-25 or other efforts to stop or address any conduct described in section 661-21(a).

(b) Relief under subsection (a) shall include reinstatement with the same seniority status that the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back

pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action for relief from retaliatory actions under subsection (a) may be brought in the appropriate court of this State for the relief provided in this part.

(c) An action for relief from retaliatory actions under subsection (a) shall be brought within three years of the retaliatory conduct upon which the action is based.

§661- Certain actions barred. (a) In no event may a person bring an action under this part that is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

(b) The court shall dismiss an action or claim under this part, unless opposed by the State, if the allegations or transactions alleged in the action or claim are substantially the same as those publicly disclosed:

- (1) In a state criminal, civil, or administrative hearing in which the State or its agent is a party;
- (2) In a state legislative or other state report, hearing, audit, or investigation; or
- (3) By the news media,

unless the action is brought by the attorney general or the person bringing the action is an original source of the information.

(c) For purposes of this section, "original source" means an individual who:

- (1) Prior to public disclosure under subsection (b), has voluntarily disclosed to the State the information on which the allegations or transactions in a claim are based; or
- (2) Has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the State before filing an action under this part."

SECTION 6. Section 661-21, Hawaii Revised Statutes, is amended to read as follows:

"§661-21 Actions for false claims to the State; qui tam actions. (a) Notwithstanding section 661-7 to the contrary, any person who:

- (1) Knowingly presents, or causes to be presented, ~~[to an officer or employee of the State]~~ a false or fraudulent claim for payment or approval;
- (2) Knowingly makes, uses, or causes to be made or used, a false record or statement ~~[to get a false or fraudulent claim paid or approved by the State;]~~ material to a false or fraudulent claim;
- ~~[(3) Conspires to defraud the State by getting a false or fraudulent claim allowed or paid;~~
- ~~(4)~~ (3) Has possession, custody, or control of property or money used, or to be used, by the State and, intending to defraud the State or ~~[wilfully]~~ wilfully conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- ~~[(5)]~~ (4) Is authorized to make or deliver a document certifying receipt of property used, or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true;

- (6) (5) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who ~~may~~ is not lawfully authorized to sell or pledge the property;
- (7) (6) Knowingly makes, uses, or causes to be made or used, a false record or statement ~~[to conceal, avoid, or decrease]~~ material to an obligation to pay or transmit money or property to the State, or knowingly conceals, or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State; [or
- (8) (7) Is a beneficiary of an inadvertent submission of a false claim to the State, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim; or
- (8) Conspires to commit any of the conduct described in this subsection.

shall be liable to the State for a civil penalty of not less than ~~[\$5,000]~~ \$5,500 and not more than ~~[\$10,000,]~~ \$11,000, plus three times the amount of damages that the State sustains due to the act of that person.

- (b) If the court finds that a person who has violated subsection (a):
 - (1) Furnished officials of the State responsible for investigating false claims violations with all information known to the person about the violation within thirty days after the date on which the defendant first obtained the information;
 - (2) Fully cooperated with any state investigation of ~~[such]~~ the violation; and
 - (3) At the time the person furnished the State with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to ~~[such]~~ the violation, and the person did not have actual knowledge of the existence of an investigation into ~~[such]~~ the violation;

the court may assess not less than two times the amount of damages that the State sustains because of the act of the person. A person violating subsection (a)~~;~~ shall also be liable to the State for the costs and attorneys' fees of a civil action brought to recover the penalty or damages.

(c) Liability under this section shall be joint and several for any act committed by two or more persons.

(d) This section shall not apply to any controversy involving an amount of less than \$500 in value. For purposes of this subsection, "controversy" means the aggregate of any one or more false claims submitted by the same person in violation of this part. Proof of specific intent to defraud is not required.

(e) For purposes of this section:

"Claim" ~~[includes]~~ means any request or demand, whether under a contract or otherwise, for money or property, and whether or not the State has title to the money or property, that is presented to an officer, employee, or agent of the State or is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the State's behalf or to advance a state program or interest, and if the State provides or has provided any portion of the money or property that is requested or demanded[, or if the government] or will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. "Claim" shall not include requests or demands for money or property that the State has paid to an individual as compensation for employment or as an income subsidy with no restrictions on that individual's use of the money or property.

"Knowing" and "knowingly" means that a person, with respect to information:

- (1) Has actual knowledge of the information;
- (2) Acts in deliberate ignorance of the truth or falsity of the information; or
- (3) Acts in reckless disregard of the truth or falsity of the information; and no proof of specific intent to defraud is required.

"Material" means having the tendency to influence or capability to influence the payment or receipt of money or property.

"Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute, regulation, or administrative rule, or from the retention of any overpayment.

~~[(f) This section shall not apply to claims, records, or statements for which procedures and remedies are otherwise specifically provided for under chapter 231.]~~

SECTION 7. Section 661-27, Hawaii Revised Statutes, is amended to read as follows:

~~[[~~§661-27~~]] Awards to qui tam plaintiffs.~~ (a) If the State proceeds with an action brought by a person under section 661-25, the person shall receive at least fifteen per cent but not more than twenty-five per cent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award sums as it considers appropriate, but in no case more than ten per cent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this subsection shall be made from the proceeds. ~~[[The]]~~ person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(b) If the State proceeds with an action brought under section 661-21, the State may file its own complaint or amend the complaint of a person who has brought an action under section 661-21 to clarify or add detail to the claims in which the State is intervening and to add any additional claims with respect to which the State contends it is entitled to relief. For statute of limitations purposes, any such state pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the State arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

~~[(b)]~~ (c) If the State does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five per cent and not more than thirty per cent of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

~~[(e)]~~ (d) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 661-21 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of section 661-21, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the State to continue the action.

~~[(d)]~~ (e) If the State does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was frivolous, vexatious, or brought primarily for purposes of harassment.

~~[(e)]~~ (f) In no event may a person bring an action under section 661-25:

- (1) Against a member of the state senate or state house of representatives, a member of the judiciary, or an elected official in the executive branch of the State, if the action is based on evidence or information known to the State. For purposes of this section, evidence or information known only to the person or persons against whom an action is brought shall not be considered to be known to the State;
- ~~[(2)]~~ When the person is a present or former employee of the State and the action is based upon information discovered by the employee during the course of the employee's employment, unless the employee first, in good faith, exhausted any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the State failed to act on the information provided within a reasonable period of time; or
- ~~[(3)]~~ (2) That is based upon allegations or transactions that are the subject of a ~~[civil or criminal investigation by the State,]~~ civil suit~~[,]~~ or an administrative civil money penalty proceeding in which the State is already a party."

SECTION 8. Section 661-28, Hawaii Revised Statutes, is repealed.

PART III

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 11. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

Notes

1. Prior to amendment "has" appeared here.
2. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Probation Services Fee.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 706-648, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) The court, when sentencing a defendant to probation^[5] or granting deferral of a plea under section 853-1, shall order the defendant to pay a probation services fee. The amount of the fee shall be as follows:

- (a) \$150, when the term of probation or period of deferral is for more than one year; or
- (b) \$75, when the term of probation or period of deferral is for one year or less;

provided that no fee shall be ordered when the court determines that the defendant is unable to pay the fee.”

SECTION 2. Section 853-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The proceedings may be deferred upon any of the conditions specified by section 706-624. As a further condition, the court shall impose a compensation fee pursuant to section 351-62.6 and a probation services fee pursuant to section 706-648 upon every defendant who has entered a plea of guilty or nolo contendere to a petty misdemeanor, misdemeanor, or felony; provided that the court shall waive the imposition of a compensation or probation services fee, if it finds that the defendant is unable to pay the compensation or probation services fee. The court may defer the proceedings for a period of time as the court shall direct but in no case to exceed the maximum sentence allowable; provided that, if the defendant has entered a plea of guilty or nolo contendere to a petty misdemeanor, the court may defer the proceedings for a period not to exceed one year. The defendant may be subject to bail or recognizance at the court’s discretion during the period during which the proceedings are deferred.”

SECTION 3. This Act shall not apply to any defendant granted a deferred acceptance of guilty or no contest plea before the effective date of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

A Bill for an Act Relating to Medical Claim Conciliation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that many claims now filed with medical claim conciliation panels tend to function as inquiries rather than actual claims, and patients or their families tend to use these proceedings to seek in-

formation regarding adverse events that they associate with medical treatment. Most matters filed with medical claim conciliation panels are eventually resolved in favor of the medical provider, but they have unintended consequences for health professionals because the proceedings are treated as claims rather than inquiries for the purposes of reporting incidents to medical malpractice insurers.

The legislature further finds that provisions in the Hawaii Revised Statutes relating to medical claims conciliation should be amended to reflect that many filings, particularly by pro se parties, are inquisitive in nature and are based on a lack of information rather than claims based on substantive analysis of the applicable standard of care. Proceedings with medical claim conciliation panels should be conducted in a non-adversarial way and structured to facilitate the conveying of information rather than assigning blame. Increased transparency and education for those who perceive fault on the part of medical providers will assist in the amicable resolution of their concerns without the need for formal claims. Medical claim conciliation panels should endeavor to provide a prompt exchange of information and serve a facilitation and conciliation role for these inquiries. However, these panel proceedings are intended to provide a forum of last resort and are not intended as a substitute for informal direct communications between patients and providers. Accordingly, statutory provisions relating to filing fees and certificates of consultations should be retained to assure that the panel process is not taken lightly and to encourage patients and providers to attempt informal resolution of their concerns.

The legislature further finds that making medical claim conciliation panel proceedings advisory in nature would allow the panels' role to become more conciliatory rather than adjudicatory. To this end, this Act amends the current law to reflect this practice by deleting the decision-making function of the panels and instead emphasizing conciliation and mediation to resolve matters that are before them.

The legislature further finds that there is much that the medical claim conciliation panel process may do to narrow and define claims when complete resolution cannot be achieved during panel proceedings and litigation subsequently must be commenced. The legislature does not intend to eliminate panels' ability to consider and discuss liability, causation, or damages with the parties, but rather, it intends to focus discussion of those issues in the context of conciliation or mediation that better reflects the panels' advisory nature. This conciliatory approach will better assist parties in fully understanding the nature of claims, defenses, and damages and encourage parties to reach a voluntary settlement. Medical claim conciliation panels should continue to express their opinions on liability, causation, and damages to the parties to assist the parties in evaluating the parties' positions. However, panels should no longer render formal decisions in order to give the panels greater flexibility in handling true claims.

Panels should continue to have the authority to require adversarial proceedings when adversarial proceedings would be more helpful for the ultimate resolution of claims, but only after consultation with or agreement by the parties and only upon a finding that further proceedings would be helpful to the resolution of important claim issues.

The legislature also finds that resolution of medical claims will be encouraged by allowing parties to agree to engage in alternative dispute resolution without the need to first file a claim with a medical claim conciliation panel. This will allow the parties to use moneys for alternative dispute resolution that otherwise would have been spent to pay filing fees. In addition, filing fees for those inquiries initially filed with the panel would be refunded, less a nominal administrative fee, if all parties agree to alternative dispute resolution instead of the medical claim conciliation panel process.

The legislature also finds that medical malpractice insurers should be prohibited from increasing premiums based on medical claim conciliation panel filings since these filings should be properly recognized as inquiries rather than true claims. In addition, panel records should be expunged if there is an insufficient basis to support a finding of a medical tort against a provider.

The purpose of this Act is to amend part II of chapter 671, Hawaii Revised Statutes, relating to medical claim conciliation, to more closely reflect actual practice and the original intent for panels to serve in a conciliatory role.

SECTION 2. Section 453-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall employ, not subject to chapter 76, an executive secretary to administer the board's activities and an employee to administer the medical ~~[claim]~~ inquiry and conciliation panels established under chapter 671. The employee responsible for administration of the medical ~~[claim]~~ inquiry and conciliation panels shall have no duties in administration of the board's activities."

SECTION 3. Section 453-7.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of commerce and consumer affairs shall review each complaint, inquiry, and information, as applicable, received under sections 92-17, 329-44, 453-8.7, 663-1.7, and 671-5~~[-, and 671-15]~~. The department shall investigate the complaint, inquiry, or information if it appears that the physician or osteopathic physician who is the subject of the complaint, inquiry, or information has violated this chapter. If the department determines that the physician or osteopathic physician has violated this chapter, the department shall present the results of its investigation to the Hawaii medical board for appropriate disciplinary proceedings."

SECTION 4. Chapter 671, part II, Hawaii Revised Statutes, is amended to read as follows:

"PART II. MEDICAL ~~[CLAIM]~~ INQUIRY AND CONCILIATION

§671-11 Medical ~~[claim]~~ inquiry and conciliation panels; composition, selection, compensation. (a) There are established medical ~~[claim]~~ inquiry and conciliation panels which shall ~~[review and render findings and advisory opinions on the issues of liability and damages in medical tort claims against health care providers.]~~ facilitate the resolution of inquiries regarding the rendering of professional services by health care providers that involve injury, death, or other damages to a patient.

(b) A medical ~~[claim]~~ inquiry and conciliation panel shall be formed for each ~~[claim]~~ inquiry filed pursuant to section 671-12 and ~~[after each panel renders its decision or the claim is otherwise disposed of it]~~ shall be disbanded~~[-]~~ after an inquiry is resolved, a notice of termination is filed, or a suit based on the circumstances of the injury is filed in a court of competent jurisdiction. Each medical ~~[claim]~~ inquiry and conciliation panel shall consist of one chairperson ~~[selected from among persons who are familiar with and experienced in the personal injury claims settlement process, one]~~ who shall be an attorney licensed to practice in the courts of the State and experienced in trial practice~~[-]~~ and the personal injury claims settlement process and one physician, osteopathic physician, or surgeon licensed to practice under chapter 453. The chairperson shall be appointed by the director of ~~[the department of]~~ commerce and consumer affairs

from a list of eligible persons approved by the chief justice of the supreme court of Hawaii. ~~[The attorney shall be appointed by the chairperson from a list of not less than thirty-five attorneys experienced in trial practice submitted annually by the supreme court.]~~ The physician, osteopathic physician, or surgeon shall be appointed by the chairperson and shall be ~~[currently]~~ licensed and in good standing under chapter 453.

(c) The chairperson shall preside at the meetings of the panel. The chairperson, ~~[all panel members,]~~ second panel member, and any consultant called by the panel to appear before the panel shall be compensated at the rate of ~~[\$300]~~ \$450 per ~~[claim]~~ inquiry which will become payable ~~[when the decision of the panel is submitted,]~~ at the conclusion of panel proceedings. At the discretion of the director, the chairperson, second panel ~~[members,]~~ member, and any consultant called by the panel to appear before the panel, may be compensated at one-half the amount of compensation specified in this section, if the ~~[claim]~~ inquiry is disposed of by any means prior to ~~[the hearing by]~~ a meeting of the panel[-] and the parties or their legal representatives. The chairperson, ~~[all panel members,]~~ second panel member, and any consultant called by the panel to appear before the panel also shall be paid allowances for travel and living expenses which may be incurred as a result of the performance of their duties on or for the panel. These costs shall be paid by the department of commerce and consumer affairs from the filing fees paid by the parties.

(d) The ~~[claimant]~~ party initiating an inquiry shall pay a filing fee of \$450 to the department upon the filing of the ~~[claim]~~ inquiry, and the failure to do so shall result in the ~~[claim]~~ inquiry being rejected for filing. Each health care provider and other parties to the ~~[claim]~~ inquiry shall pay a filing fee of \$450 to the department within twenty days of being served with the ~~[claim-]~~ inquiry. Each party to ~~[a claim]~~ an inquiry shall be assessed a non-refundable processing fee by the department in the amount of \$50. The non-refundable processing fee shall be retained from each party's filing fee, and shall be used to defray the administrative costs of the medical ~~[claims]~~ inquiry and conciliation panel program.

(e) After the panel has ~~[made a final decision on a claim,]~~ filed a notice of termination, or after a final disposition of the ~~[claim]~~ inquiry has been made without ~~[a hearing]~~ proceedings before the panel, the department shall return any moneys remaining after all panel costs have been paid, to the respective parties on a pro rata basis.

(f) The office and meeting space, secretarial and clerical assistance, office equipment, and office supplies for the panel shall be furnished by the department. The chairperson may designate any alternative meeting place or site for the ~~[hearing-]~~ proceedings.

(g) The Hawaii medical board shall prepare a list of physicians, osteopathic physicians, surgeons, and podiatrists, as the case may be, along with their respective specialties. These physicians, osteopathic physicians, ~~[and]~~ surgeons, and podiatrists shall be eligible to serve as consultants to the medical inquiry and conciliation panel in their respective fields. Panel members may consult with other legal, medical, and insurance specialists.

[[§671-11.5]] Waiver of filing fee. (a) If any party to ~~[a claim]~~ an inquiry cannot pay the required filing fee, the party may file with the director a motion to waive the filing fee. The motion to waive the filing fee shall be accompanied by an affidavit in a format prescribed by the department, showing in detail:

- (1) The party's inability to pay the filing fee;
- (2) The party's belief that the party is entitled to redress; and

- (3) A statement of the issues that the party intends to present at ~~[the hearing]~~ proceedings before a medical ~~[claims]~~ inquiry and conciliation panel.
- (b) The director shall decide on the motion to waive the filing fee as expeditiously as possible, and no oral arguments shall be permitted.
- (c) If the director grants the motion to waive the filing fee, the party may proceed without further application to the director or panel, and without payment of the filing fee. If the motion is denied, the director shall state the reasons for the denial in writing. The director shall promptly provide the party with a filed copy of the director's order granting or denying the motion.
- (d) If a motion to waive the filing fee is denied by the director, the party may seek judicial review under section 91-14.
- (e) If the director denies a party's motion to waive the filing fee, the party shall pay the filing fee within thirty days after the denial of the motion, unless the party has filed an appeal under section 91-14. If the party has filed an appeal under section 91-14, the party may proceed without payment of the filing fee, until ~~[such time as]~~ the time that a final judicial determination is rendered.
- (f) If the party files an appeal under section 91-14, and the court upholds the director's denial of the aggrieved party's motion to waive the filing fee, the party shall pay the filing fee within thirty days after the court's affirmation of the denial. If the court determines that the party's motion for waiver of the filing fee was improperly denied, the party shall be entitled to proceed without payment of the filing fee.

§671-12 Review by panel required; notice; presentation of ~~[claims]~~ inquiry; request for a more definite statement of the ~~[claim]~~ inquiry. (a) ~~[Effective July 1, 1976, any]~~ Any person or the person's representative ~~[claiming that a medical tort has been committed]~~ having concerns regarding the existence of a medical tort shall submit ~~[a statement of the claim]~~ an inquiry to the medical ~~[claim]~~ inquiry and conciliation panel before a suit based on the ~~[claim]~~ circumstances of the inquiry may be commenced in any court of this State. ~~[Claims]~~ Inquiries shall be submitted to the medical ~~[claim]~~ inquiry and conciliation panel in writing~~].~~ The claimant shall set forth and shall include the facts upon which the ~~[claim]~~ inquiry is based and ~~[shall include]~~ the names of all parties against whom the ~~[claim]~~ inquiry is or may be made who are then known to the ~~[claimant]~~ person or the person's representative.

(b) Within five business days ~~[thereafter]~~ after receipt of an inquiry the panel shall give notice of the ~~[claim]~~ inquiry and the statement of the ~~[claim]~~ inquiry, by certified mail, to all health care providers and others who are or may be parties to the ~~[claim]~~ inquiry and shall furnish copies of written ~~[claims]~~ inquiries to ~~[such]~~ those persons. ~~[Such]~~ The notice shall set forth a date, not more than twenty days after the mailing of the notice, within which any health care provider against whom ~~[a claim]~~ an inquiry is made shall file a written response ~~[to the claim]~~ and a date and time, not less than five days following the last date for filing a response, for ~~[a hearing of]~~ a proceeding upon the inquiry by the panel. ~~[Such]~~ and the parties. The notice shall describe the nature and purpose of the panel's proceedings and shall designate the place of the meeting. The times originally set forth in the notice may be enlarged by the chairperson, on due notice to all parties, for good cause.

(c) If the statement of the ~~[claim]~~ inquiry in the notice is so vague or ambiguous that any party receiving notice of the ~~[claim]~~ inquiry cannot reasonably be required to frame a written response, the party may submit a written request to the director of commerce and consumer affairs for a more definite statement before filing the written response. Copies of the request shall be pro-

vided to the panel~~[-the claimant,]~~ and ~~[other]~~ all affected parties. The request, which shall be ex parte and stay the proceedings of the panel until notice of the director's decision is given to the panel and all parties, shall specify the defects complained of and the details desired. The director may deny, grant, or modify the request at the director's own discretion, without the necessity of a hearing, although the director may reach a decision after consulting with the panel or ~~[the claimant,]~~ any party or parties. The director shall provide notice of the decision to the panel~~[-the claimant,]~~ and ~~[other]~~ all affected parties. If the request is granted and ~~[the claimant]~~ any party so directed fails to provide a more definite statement of the ~~[claim]~~ inquiry within five days after notice of the decision, the panel may make ~~[such]~~ an order as it deems just. This subsection shall not be used as a tactic to delay the proceedings.

[[§671-12.5]] Certificate of consultation. (a) Any ~~[claim]~~ inquiry filed with the medical ~~[claim]~~ inquiry and conciliation panel under this chapter shall be accompanied by a certificate ~~[which]~~ that declares one of the following:

- (1) That the ~~[claimant or the claimant's]~~ party initiating the inquiry or the party's attorney has consulted with at least one physician who is licensed to practice in this State or any other state, and who is knowledgeable or experienced in the same medical specialty as the health care professional against whom the ~~[claim]~~ inquiry is made, and that the ~~[claimant or claimant's]~~ party or the party's attorney has concluded on the basis of ~~[such]~~ the consultation that there is a reasonable and meritorious cause for filing the ~~[claim-]~~ inquiry. If the ~~[claimant or the claimant's]~~ party initiating the inquiry or the party's attorney is not able to consult with a physician in the same medical specialty as the health care professional against whom the ~~[claim]~~ inquiry is made, ~~[the claimant or claimant's]~~ that party or the party's attorney may consult with a physician who is licensed in this State or in any other state who is knowledgeable and experienced in a medical specialty that is as closely related as practicable to the medical specialty of the health care professional against whom the ~~[claim]~~ inquiry is made. The physician or physicians consulted ~~[by the claimant or the claimant's attorney]~~ may not be a party to the ~~[case,]~~ inquiry, nor be compelled to testify or otherwise participate in ~~[the hearing before]~~ proceedings related to the medical ~~[claim]~~ inquiry and conciliation panel;
- (2) That the ~~[claimant or the claimant's]~~ party initiating the inquiry or the party's attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificate required by paragraph (1) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificate required by paragraph (1) shall be filed by the ~~[claimant or the claimant's]~~ party initiating the inquiry or the party's attorney within ninety days after filing the ~~[claim,]~~ inquiry; or
- (3) That the ~~[claimant or the claimant's]~~ party initiating the inquiry or the party's attorney was unable to obtain the consultation required by paragraph (1) after the ~~[claimant or the claimant's]~~ party or the party's attorney had made a good faith attempt to obtain ~~[such]~~ the consultation and the physician contacted would not agree to ~~[such]~~ a the consultation. For purposes of this paragraph, "good faith attempt" refers to the responsibility of a ~~[claimant or claimant's]~~ party initiating an inquiry or the party's attorney to make reasonable ef-

forts to contact a physician for the purpose of reviewing the circumstances upon which ~~[a claim]~~ an inquiry is based. The ~~[claimant or claimant's]~~ party initiating the inquiry or the party's attorney may contact physicians by letter, telephone, facsimile, or other electronic means of communication. If the physician does not respond within a reasonable time, the ~~[claimant or claimant's]~~ party initiating the inquiry or the party's attorney may submit ~~[its claim]~~ the inquiry to the medical ~~[claim]~~ inquiry and conciliation panel along with a certificate declaring ~~[such]~~ the nonresponse to [claimant's] the party or the party's attorney's good faith attempt. A "good faith attempt" shall ultimately be evaluated in light of the goal of having a qualified physician assist the ~~[claimant or claimant's]~~ party initiating the inquiry or the party's attorney in understanding the basis of the ~~[claim]~~ inquiry and ~~[such]~~ the determination shall depend upon the circumstances of each individual case.

(b) Where a ~~[claimant or the claimant's]~~ party initiating an inquiry or the party's attorney intends to rely solely on a failure to inform of the consequences of a procedure (informed consent), this section shall be inapplicable. The ~~[claimant or the claimant's]~~ party initiating an inquiry or the party's attorney shall certify upon filing of the ~~[claim]~~ inquiry that ~~[the claimant or the claimant's attorney is]~~ the party or the party's attorney is relying solely on the failure to inform of the consequences of a procedure and for that reason is not filing a certificate as required by this section.

(c) For the purposes of this section, the ~~[claimant or the claimant's]~~ party initiating an inquiry or the party's attorney shall not be required to disclose the names of any physician consulted to fulfill the requirements of subsection (a) to any of the other parties to the ~~[claim]~~ inquiry. The medical ~~[claim]~~ inquiry and conciliation panel may require the ~~[claimant or the claimant's]~~ party initiating an inquiry or the party's attorney to disclose the name of any physician consulted to fulfill the requirements of subsection (a). No disclosure of the name of any physician consulted to fulfill the requirements of subsection (a) shall be made to any of the other parties to the ~~[claim]~~ inquiry; provided that the medical ~~[claim]~~ inquiry and conciliation panel may contact ~~[any such]~~ the physician to determine if the requirements of subsection (a) were met.

(d) Unless a certificate is filed pursuant to subsection (a) or (b), the ~~[claim]~~ inquiry shall not be received for filing by the medical ~~[claim]~~ inquiry and conciliation panel.

§671-13 Medical ~~[claim]~~ inquiry and conciliation panel ~~[hearing; fact-finding; evidences] proceedings; voluntary settlement.~~ Every ~~[claim of]~~ inquiry regarding a medical tort shall be ~~[heard]~~ processed by the medical ~~[claim]~~ inquiry and conciliation panel within thirty days after the last date for filing a response. No persons other than the panel, witnesses, and consultants called by the panel, and the persons listed in section 671-14 shall be present except with the permission of the chairperson. The panel may, in its discretion, conduct an inquiry of a party, witness, or consultant without the presence of any or all parties.

The ~~[hearing]~~ proceedings shall be informal. Chapters 91 and 92 shall not apply. The panel may require a stenographic record of all or part of its proceedings for the use of the panel, but ~~[such]~~ the record shall not be made available to the parties. The panel may receive any oral or documentary evidence. ~~[Questioning of parties, witnesses, and consultants may be conducted by the panel, and the panel may, in its discretion, permit any party, or any counsel for a party to question other parties, witnesses, or consultants. The panel may designate who, among the parties, shall have the burden of going forward with the evidence with~~

respect to such issues as it may consider, and unless otherwise designated by the panel, when medical and hospital records have been provided to the claimant for the claimant's proper review, such burden shall initially rest with the claimant at the commencement of the hearing.] The panel shall conduct proceedings in a manner appropriate to the circumstances of the inquiry and to facilitate resolution of the matter. The panel shall conduct proceedings in a non-adversarial manner consistent with the primary purpose of conciliation.

The panel shall have the power to require by subpoena the appearance and testimony of witnesses and the production of documentary evidence. When [such] the subpoena power is utilized, notice shall be given to all parties. The testimony of witnesses may be taken either orally before the panel or by deposition. In cases of refusal to obey a subpoena issued by the panel, the panel may invoke the aid of any circuit court in the State, which may issue an order requiring compliance with the subpoena. Failure to obey [such] an order may be punished by the court as a contempt thereof. Any member of the panel, the director of [the department,] commerce and consumer affairs, or any person designated by the director [of the department] may sign subpoenas. Any member of the panel may administer oaths and affirmations, examine witnesses, and receive evidence. Notwithstanding [such] these powers, the panel shall attempt to secure the voluntary appearance, testimony, and cooperation of parties, witnesses, and consultants without coercion.

At [the hearing of the] panel proceedings and [in arriving at its opinion] to assist its conciliation role, the panel [shall] may consider, but not be limited to, statements or testimony of witnesses, hospital and medical records, nurses' notes, x-rays, and other records kept in the usual course of the practice of the health care provider without the necessity for other identification or authentication, statement of fact, or opinion on a subject contained in a published treatise, periodical, book, or pamphlet, or statements of experts without the necessity of the experts appearing at the [hearing,] proceeding. The panel may upon the application of any party or upon its own decision appoint as a consultant, an impartial and qualified physician, surgeon, physician and surgeon, or other professional person or expert to testify before the panel or to conduct any necessary professional or expert examination of the [claimant] party initiating the inquiry or relevant evidentiary matter and to report to or testify as a witness thereto. [Such a] The consultant shall not be compensated or reimbursed except for travel and living expenses to be paid as provided in section 671-11. Except for the production of hospital and medical records, nurses' notes, x-rays, and other records kept in the usual course of the practice of the health care provider, discovery by the parties shall not be allowed.

During the [hearing and at any time prior to the rendition of an advisory decision pursuant to section 671-15,] proceedings or at any time before termination, the panel may encourage the parties to settle or otherwise dispose of the [ease] inquiry voluntarily.

§671-14 Same; persons attending [hearings] proceedings of panel. Unless excluded or excused by the panel, the following persons shall attend [hearings] proceedings before the panel:

- (1) The party or parties [making the claim,] submitting the inquiry;
- (2) The health care provider or providers against whom the [claim is made] inquiry is submitted or representatives thereof, other than counsel, authorized to act for [such] the health care provider or providers; and
- (3) Counsel for the parties, if any.

§671-15 [Same, decisions.] Panel termination. [(a) Within thirty days after the completion of a hearing, the medical claim conciliation panel shall file a written advisory decision with the insurance commissioner who shall thereupon mail copies to all parties concerned, their counsel, and the representative of each health care provider's liability insurance carrier authorized to act for such carrier, as appropriate. The insurance commissioner also shall mail copies of the advisory decision to the department of commerce and consumer affairs, if the claim is against a physician, osteopathic physician, or surgeon licensed under chapter 453 or a podiatrist licensed under chapter 463E. The panel shall decide the issue of liability and shall state its conclusions in substantially the following language: "We find the health care provider was actionably negligent in his or her care and treatment of the patient and we, therefore, find for the claimant"; or "We find the health care provider was not actionably negligent in his or her care and treatment of the patient and we, therefore, find for the health care provider".

(b) After a finding of liability, the medical claim conciliation panel shall decide the amount of damages, if any, which should be awarded in the case. The decision as to damages shall include in simple, concise terms a division as to which portion of the damages recommended are attributable to economic losses and which to noneconomic losses; provided the panel may not recommend punitive damages.

(c) The decisions shall be signed by all members of the medical claim conciliation panel; provided that any member of the panel may file a written concurring or dissenting opinion.

(d) ~~The advisory decision required by this section need not be filed if the claim is settled or otherwise disposed of before the decision is written or filed.] The director of commerce and consumer affairs or the panel shall notify all affected parties upon termination of panel proceedings. At the discretion of the director or the panel, a notice of termination may state whether any party or parties to the matter failed to meet the requirements of this part or meaningfully participate in panel proceedings.~~

[[§671-15.5]] Expungement of records; malpractice insurance rates. (a) [Upon a decision by the medical claim conciliation panel finding for the health care provider pursuant to section 671-15(a), the] A health care provider may apply to the panel for expungement of all records of the related proceedings. The panel shall expunge all records if [a majority of] the panel [finds that the complaint is fraudulent or frivolous.] agrees that the inquiry did not provide a sufficient basis to support the finding of a medical tort against the health care provider applying for expungement.

(b) No insurer providing professional liability insurance for a health care provider shall increase any premium rate for the health care provider on the basis of the filing of ~~[a medical tort claim against]~~ an inquiry involving the health care provider [that is determined by] with the medical [claim] inquiry and conciliation panel [to be fraudulent or frivolous.] unless an indemnity payment is made to the party initiating the inquiry or the party initiating the inquiry institutes litigation in a court of competent jurisdiction based on the circumstances of the inquiry.

§671-16 Subsequent litigation; excluded evidence. The ~~[claimant] party initiating the inquiry may institute litigation based upon the [claim] circumstances of the inquiry in an appropriate court only after [a party to a] the medical [claim] inquiry and conciliation panel [hearing rejects the decision of the panel,] proceedings were terminated pursuant to section 671-15; a party has partici-~~

pated in alternative dispute resolution pursuant to section 671-16.6; or [after] the twelve-month period under section 671-18 has expired.

No statement made in the course of the [hearing] proceedings of the medical [claim] inquiry and conciliation panel shall be admissible in evidence either as an admission, to impeach the credibility of a witness, or for any other purpose in any trial of the action; provided that [such] the statements may be admissible for the purpose of section 671-19~~[-, hereof]~~. No decision, conclusion, finding, statement, or recommendation of the medical [claim] inquiry and conciliation panel on the issue of liability or on the issue of damages shall be admitted into evidence in any subsequent trial, nor shall any party to the medical [claim] inquiry and conciliation panel [hearing,] proceeding, or the counsel or other representative of [such] a party, refer or comment thereon in an opening statement, an argument, or at any other time, to the court or jury; provided that [such] the decision, conclusion, finding, or recommendation may be admissible for the purpose of section 671-19~~[-, hereof]~~.

[[§671-16.5]] Arbitration; subsequent litigation. Any person or the person's representative claiming that a medical tort has been committed or any health care provider against whom [a claim] an inquiry has been made may elect to bypass the court annexed arbitration program under section 601-20 after the [claim] inquiry has been submitted to the medical [claim] inquiry and conciliation panel and the panel has [rendered a decision or] been terminated pursuant to section 671-15 if the party meaningfully participated in panel proceedings, an alternative dispute resolution process has been terminated pursuant to section 671-16.6, or the panel or alternative dispute resolution process has not [reached a decision] completed proceedings within the tolling period of the statute of limitations under section 671-18.

[[§671-16.6]] Submission of [claim] inquiry to an alternative dispute resolution provider. (a) Any [claim] inquiry initially filed with the medical [claim] inquiry and conciliation panel may be subsequently submitted to an alternative dispute resolution provider upon the written agreement of all of the parties [to the claim] and with the written approval of the director~~[-]~~ of commerce and consumer affairs. The director shall approve the alternative dispute resolution provider and the alternative dispute resolution procedures. All filing fees, less a processing fee of \$50, shall be refunded to the appropriate parties if the panel was not constituted or had not taken any action related to the inquiry prior to the submission of the inquiry to an alternative dispute resolution provider. If the panel was constituted or took any action prior to the submission of the inquiry to an alternative dispute resolution provider, the remaining balance of any filing fees shall be refunded to the appropriate parties, less a processing fee of \$50 and a pro-rata amount to be determined by the director.

(b) The parties shall comply with the procedures established by the alternative dispute resolution provider and approved by the director. If a party does not comply with those procedures, any other party may file a motion with the director to have the [claim] inquiry resubmitted to the medical [claim] inquiry and conciliation panel. The director may collect any filing fees that were refunded pursuant to subsection (a) from a party that resubmits its inquiry.

(c) Notwithstanding section 671-12, any inquiry may be submitted directly to an alternative dispute resolution process upon the written agreement of all parties without first submitting the inquiry to a medical inquiry and conciliation panel. A written agreement shall be effective as of the date of its execution by the parties. Any inquiry submitted directly to alternative dispute resolution need not be subsequently submitted to a medical inquiry and conciliation panel

and shall not be subject to filing fees assessed by the director for the medical inquiry and conciliation panel.

~~[(e)]~~ (d) Within thirty days after the completion of the alternative dispute resolution process, the alternative dispute resolution provider shall notify all parties concerned, their counsel, and the representative of each health care provider's liability insurance carrier authorized to act for the carrier, as appropriate, that the alternative dispute resolution process has been completed.

~~[(d)]~~ (e) The [claimant] party submitting the inquiry may institute litigation based upon the [claim] inquiry in an appropriate court only if:

- (1) The parties were not able to resolve the entire [claim] matter through the alternative dispute resolution process and the matter has not been resubmitted to the medical [claim] inquiry and conciliation panel pursuant to subsection (b) of this section; or
- (2) The [claim] matter has not been resolved through the alternative dispute resolution process after twelve months from the date the [claim] matter was filed with the approved or agreed upon alternative dispute resolution provider.

~~[(e)]~~ (f) No statement made in the course of the approved or agreed upon alternative dispute resolution process shall be admissible in evidence as an admission, to impeach the credibility of a witness, or for any other purpose in any trial of the action. No decision, conclusion, finding, or recommendation of the approved or agreed upon alternative dispute resolution provider on the issue of liability or on the issue of damages shall be admitted into evidence in any subsequent trial, nor shall any party to the approved or agreed upon alternative dispute resolution hearing, their counsel, or other representative of ~~[such]~~ the party, refer or comment thereon in an opening statement, in an argument, or at any time, to the court or jury.

[[§671-17]] Immunity of panel members from liability. No member of a medical [claim] inquiry and conciliation panel shall be liable in damages for libel, slander, or other defamation of character of any party to a medical [claim] inquiry and conciliation panel proceeding for any action taken or any decision, conclusion, finding, or recommendation made by the member while acting within the member's capacity as a member of a medical [claim] inquiry and conciliation panel under this [Act.] part.

§671-18 Statute of limitations tolled. The filing of the [claim] inquiry with the medical [claim] inquiry and conciliation panel or with an approved or agreed upon alternative dispute resolution provider shall toll any applicable statute of limitations, and ~~[any such]~~ the statute of limitations shall remain tolled until sixty days after the ~~[date the decision]~~ termination of the panel or the notification of completion from the approved or agreed upon alternative dispute resolution provider is mailed or delivered to the parties. If ~~[a decision by the medical claim conciliation panel is not reached]~~ panel proceedings are not completed within twelve months, or the alternative dispute resolution process is not completed within twelve months, the statute of limitations shall resume running and the party filing the [claim] inquiry may commence a suit based on the [claim] circumstances related to the inquiry in any appropriate court of this State. The panel or the approved or agreed upon alternative dispute resolution provider shall notify all parties in writing of this provision.

§671-19 Duty to cooperate; assessment of costs and fees. It shall be the duty of every person who files ~~[a claim]~~ an inquiry with the medical [claim] inquiry and conciliation panel, every health care provider against whom the

[~~claim~~] inquiry is made, and every insurance carrier or other person providing medical tort liability insurance for the health care provider, to cooperate with the medical [~~claim~~] inquiry and conciliation panel and meaningfully participate in panel proceedings for the purpose of achieving a prompt, fair, and just resolution, disposition, or settlement of the [~~claim~~,] inquiry, provided that cooperation and participation shall not prejudice the substantive rights of those persons.

Any party may apply to the panel to have the costs of the action assessed against any party for failure to cooperate with the panel[~~;~~] or meaningfully participate in panel proceedings. The panel may award costs, or a portion thereof, including attorney's fees, witness fees[~~;~~] including those of expert witnesses, filing fees, and costs of the medical [~~claim~~] inquiry and conciliation panel [~~hearing~~] proceedings to the party applying therefor.

In determining whether any person has failed to cooperate or meaningfully participate in good faith, the panel shall consider, but is not limited to, the following:

- (1) The attendance of the persons at [~~the hearing~~] proceedings of the medical [~~claim~~] inquiry and conciliation panel;
- (2) The extent to which representatives of parties and counsel representing parties came to panel [~~hearings~~] proceedings with knowledge of the claims and defenses and authority to negotiate a settlement or other disposition of the [~~claim~~,] matter;
- (3) The testimony of members of the panel as to the facts of the person's participation in the panel [~~hearing~~,] proceeding;
- (4) The extent of the person's cooperation in providing the panel with documents and testimony called for by the panel;
- (5) The reasons advanced by the person so charged for not fully cooperating, participating, or negotiating; and
- (6) The failure of the person to submit any required fees to the department of commerce and consumer affairs, as required by this chapter.

The party against whom costs are awarded may appeal the award to the circuit court. The court may affirm or remand the case with instructions for further proceedings; or it may reverse or modify the award if the substantial rights of the petitioners may have been prejudiced because the award is characterized as abuse of discretion.

[§671-20] Annual report. The director of commerce and consumer affairs shall prepare and submit to the legislature annually, twenty days prior to the convening of each regular session, a report containing the director's evaluation of the operation and effects of this chapter. The report shall include a summary of the [~~claims~~] inquiries brought before the medical [~~claim~~] inquiry and conciliation panel and the disposition of [~~such claims~~,] those inquiries, a description and summary of the work of the panel under this chapter, an appraisal of the effectiveness of this chapter in securing prompt and fair disposition of [~~medical tort claims~~,] inquiries regarding the rendering of professional services by health care providers that involved injury, death, or other damages to a patient, a review of the number and outcomes of [~~claims~~] inquiries brought under section 671-12, and recommendations for changes, modifications, or repeal of this chapter or parts thereof with accompanying reasons and data."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on January 1, 2013.

(Approved July 9, 2012.)

ACT 297

S.B. NO. 2630

A Bill for an Act Relating To Noise.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the method of measuring noise used by the department of health is the dBA weighting system. The dBA system measures sound in decibels using the "A weighted" measurement, dBA, such that sound levels measured in dBA correspond to what the human ear hears. An alternative, the dBC weighting system also measures sound levels but includes measurement of the lower frequencies that cause physical objects such as windows and walls to vibrate. Because these lower frequency sound waves are not perceived by the human ear as measured by the dBA weighting system, even though they are physically felt through strong vibrations, the sound levels generated do not currently constitute a violation of the community noise control law.

The purpose of this Act is to authorize a liquor commission in a county with a population of seven hundred thousand or greater to use both the dBA and the dBC weighting system for the purpose of community noise control.

SECTION 2. Section 281-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures, sells, or purchases any liquor without being authorized pursuant to this chapter; provided that in counties which have established by charter a liquor control adjudication board, the board shall have the jurisdiction, power, authority, and discretion to hear and determine administrative complaints of the director regarding violations of the liquor laws of the State or of the rules of the liquor commission, and impose penalties for violations thereof as may be provided by law;
- (3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education; provided that any educational program shall be limited to the commission staff, commissioners, liquor control adjudication board members, licensees and their employees and shall be financed through the money collected from the assessment of fines against licensees; provided that fine moneys, not to exceed ten per cent a year of fines accumulated, may be used to fund public liquor related educational or enforcement programs;
- (4) From time to time to make, amend, and repeal such rules, not inconsistent with this chapter, as in the judgment of the commission seem appropriate for carrying out this chapter and for the efficient

administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;

- (5) Subject to chapter 76, to appoint and remove an administrator, who may also be appointed an investigator and who shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, and clerical or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator, within the scope of the investigator's duties, shall have the powers of a police officer;
- (6) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
- (7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;
- (8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the county as to each class respectively;
- (9) To prescribe all forms to be used for the purposes of this chapter not otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
- (10) To investigate violations of this chapter, chapter 244D and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, to include covert operations, and to report violations to the prosecuting officer for prosecution and, where appropriate, the director of taxation to hear and determine complaints against any licensee; provided that a liquor commission in a county with a population of seven hundred thousand or greater may establish a pilot program that employs both a dBA and a dBC sound level measurement system for the purpose of community noise control; provided further that the dBC sound level measurements shall be in accordance with the following maximum permissible sound levels in dBC:
 - (A) Zoning districts that include all areas equivalent to lands zoned residential, conservation, preservation, public space, open space, or similar type shall have a maximum dBC sound level of fifty-five from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of forty-five from 10:00 p.m. to 7:00 a.m.;
 - (B) Zoning districts that include all areas equivalent to lands zoned for multi-family dwellings, apartment, business, commercial, hotel, resort, or similar type shall have a maximum dBC sound

level of sixty from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of fifty from 10:00 p.m. to 7:00 a.m.; and

- (C) Zoning districts that include all areas equivalent to lands zoned in agriculture, country, industrial, or similar type shall have a maximum dBC sound level of seventy from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of seventy from 10:00 p.m. to 7:00 a.m.;
- (11) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of licenses;
 - (12) To prescribe, by rule, the term of any license or solicitor's and representative's permit authorized by this chapter, the annual or prorated amount, the manner of payment of fees for the licenses and permits, and the amount of filing fees; and
 - (13) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval and shall be repealed on May 5, 2017; provided that section 281-17(a), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Approved July 9, 2012.)

ACT 298

S.B. NO. 824

A Bill for an Act Relating to Motor Carriers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that motor carriers, including trucking and tour bus companies, are often required to sign transportation service contracts or agreements requiring them to indemnify the other party to the motor carrier transportation services contract for acts of negligence or intentional acts or omissions, regardless of who is actually at fault.

Although unfair and onerous, motor carriers often agree to indemnify the other party to secure work. Many motor carriers are small, locally owned businesses that cannot afford to shun service agreements requiring indemnification. These businesses typically lack the leverage to negotiate these indemnification provisions out of contracts.

While motor carriers should be held responsible for liability to the extent that the carrier is at fault, indemnification provisions can be unreasonable conditions of a transportation services agreement that carriers are often unable to refuse. In addition, indemnification provisions may eliminate the incentive for the other party to take precautions at their facilities to protect the persons and property being transported.

The purpose of this Act is to prohibit any portion of a motor carrier transportation services contract or agreement that requires the carrier to indemnify, defend, or hold harmless the other party from any liability for that party's negligence or intentional acts or omissions.

SECTION 2. Chapter 271, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§271- Motor carrier indemnification agreements prohibited. (a) Any provision in a transportation services contract or agreement that requires a motor carrier to indemnify, defend, or hold harmless or that purports to indemnify, defend, or hold harmless, whether in whole or in part, the indemnitee under the contract or agreement from any claim or liability arising from the negligence or intentional acts or omissions of the indemnitee, shall be deemed void and unenforceable as a matter of law to the extent that the provision seeks to indemnify, defend, or hold harmless the indemnitee for the negligent or intentional acts or omissions of the indemnitee.

(b) For purposes of this section:

“Indemnitee” means a person who:

- (1) Enters into a transportation services contract or agreement to use the services of a motor carrier, or to permit a motor carrier to enter the person’s premises; and
- (2) In the contract or agreement, is being, or has the effect of being indemnified, defended, or held harmless from claims or liabilities for that person’s negligence or intentional acts or omissions.

“Indemnitee” includes an agent, employee, servant, or independent contractor of the person described in paragraphs (1) and (2) of this definition.

“Motor carrier” includes an agent, employee, servant, or independent contractor of the motor carrier.

“Transportation services” means:

- (1) The transportation of persons or property;
- (2) Entry upon property to load, unload, or transport persons or property; or
- (3) Providing a service, including the storage of property, incidental to paragraph (1) or (2) of this definition.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 299

H.B. NO. 1765

A Bill for an Act Relating to Criminal History Record Checks for County Employees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 378-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee’s conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration-

tion, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

- (1) The State or any of its branches, political subdivisions, or agencies pursuant to sections 78-2.7 and 831-3.1;
- (2) The department of education pursuant to section 302A-601.5;
- (3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section ~~[846-2.7;]~~ 846-2.7(b)(5), (32), (33), (34), and (35);
- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to sections 302C-1 and 378-3(8);
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under ~~[49 U.S.C. §44901]~~ Title 49 United States Code Section 44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to ~~[49 U.S.C. §44936(a);]~~ Title 49 United States Code Section 44936(a);
- (13) The department of human services pursuant to sections 346-97 and 352-5.5;
- (14) The public library system pursuant to section 302A-601.5;
- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-12;
- (17) The board of directors of an association of owners under chapter 514A or 514B, or the manager of a condominium project pursuant to section 514A-82.1 or 514B-133; and
- (18) The department of health pursuant to section 321-15.2."

SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
- (3) The department of health on all applicants for licensure for, operators for, prospective employees, and volunteers at one or more

of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for individuals with intellectual disabilities, hospital, rural health center and rehabilitation agency, and, in the case of any of the above facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;

- (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
- (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (7) The county liquor commissions on employees and prospective employees involved in liquor administration, law enforcement, and liquor control investigations;
- [(7)] (8) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- [(8)] (9) The department of human services on prospective adoptive parents as established under section 346-19.7;
- [(9)] (10) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- [(10)] (11) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- [(11)] (12) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- [(12)] (13) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- [(13)] (14) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- [(14)] (15) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- [(15)] (16) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- [(16)] (17) The ~~[department of commerce and consumer affairs]~~ board of private detectives and guards on applicants for private detective or private guard licensure as provided by section 463-9;

- [(17)] (18) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
- [(18)] (19) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- [(19)] (20) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- [(20)] (21) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- [(21)] (22) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;
- [(22)] (23) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- [(23)] (24) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act, Title 42 United States Code Section 1396n(c), or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- [(24)] (25) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- [(25)] (26) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- [(26)] (27) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- [(27)] (28) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license; and
 - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,
 as provided by section 489D-9;
- [(28)] (29) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;

- [(29)] (30) The Hawaii health systems corporation on:
- (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- [(30)] (31) The department of commerce and consumer affairs on:
- (A) An applicant for a mortgage loan originator license; and
 - (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license,
- as provided by chapter 454F; [and]
- (32) The counties on prospective employees who work with vulnerable adults or senior citizens in community-based programs;
- (33) The counties on prospective employees for fire department positions which involve contact with children or dependent adults;
- (34) The counties on prospective employees for emergency medical services positions which involve contact with children or dependent adults;
- (35) The counties on prospective employees for emergency management positions and community volunteers whose responsibilities involve planning and executing homeland security measures including viewing, handling, and engaging in law enforcement or classified meetings and assisting vulnerable and disabled citizens during emergencies or crises; and
- [(34)] (36) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

ACT 300

H.B. NO. 2179

A Bill for an Act Relating to the Auditor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the heads of legislative service agencies have experienced a recent salary decrease (as have legislators, the governor, lieutenant governor, department directors, deputy department directors, justices, and judges). The auditor's salary, however, has not been similarly reduced because of the provision amended by this Act. The legislature finds that the auditor's salary should be subject to the same provisions as other legislative service agency heads.

The purpose of this Act is to allow the diminishment of the auditor's salary during the auditor's term of office by general law applicable to all salaried officers of the State. This Act makes the auditor's salary diminishment provision

the same as that for the legislative reference bureau director and the ombudsman. Both, like the auditor, head legislative service agencies.

SECTION 2. Section 23-3, Hawaii Revised Statutes, is amended to read as follows:

“§23-3 Salary of the auditor and appropriations. ~~[The salary of the auditor shall be fixed by the legislature and shall not be diminished during the auditor’s term of office.]~~ (a) Effective July 1, 2005, the salary of the auditor shall be the same as the salary of the director of health.

The salary of the auditor shall not be diminished during the auditor’s term of office, unless by general law applying to all salaried officers of the State.

(b) The funds for the support of the auditor’s office shall be provided for in the act providing for the expenses of the legislature.”

SECTION 3. The salary of the auditor serving on the effective date of this Act shall not be diminished during the remainder of the auditor’s term of office unless by general law applicable to all salaried officers of the State that is enacted on or after the effective date of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

ACT 301

H.B. NO. 679

A Bill for an Act Relating to Firearms.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 663-9.5, Hawaii Revised Statutes, is amended to read as follows:

“§663-9.5 Liability of firearm owners. (a) ~~[The owner of a firearm, if]~~ If a firearm discharges and the discharge of the firearm proximately causes either personal injury or property damage to any person, the owner of the firearm shall be absolutely liable for the damage.

(b) It shall be an affirmative defense to the absolute liability that:

~~(1) The firearm was not in the possession of the owner[.];~~

(c) It shall be an affirmative defense to the absolute liability that:

~~[(2)]~~ (1) The firearm was taken from the owner’s possession without the owner’s permission; and

~~[(3)]~~ (2) The owner either:

(A) Reported the theft to the police prior to the discharge; or

(B) Despite the exercise of reasonable care:

(i) Had not discovered the theft prior to the discharge; or

(ii) Was not reasonably able to report the theft to the police prior to the discharge.

~~[(e)]~~ (d) This section shall not apply when the discharge of the firearm was legally justified.

~~[(d)]~~ (e) The absolute liability under subsection (a) shall not apply to the State or counties for the use of a firearm owned by the State or county, as applicable, and used by a law enforcement officer employed by the State or county, outside of the course and scope of employment as a law enforcement officer; provided that this section shall not be construed to relieve the State and counties from any other tort liability that may be applicable to the State or counties.

(f) The absolute liability under subsection (a) shall not apply to National Rifle Association certified firearms instructors during the course of providing firearms training or safety courses or classes at a firing range to persons seeking to acquire a permit for the acquisition of a pistol or revolver in accordance with section 134-2(g)(4); provided that this section shall not be construed to relieve a National Rifle Association certified firearms instructor from any other tort liability that may be applicable.

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

ACT 302

H.B. NO. 1925

A Bill for an Act Relating to Liquor.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Class 1. Manufacturer license. A license for the manufacture of liquor shall authorize the licensee to [manufacture]:

- (1) ~~Manufacture~~ the liquor therein specified ~~[and to sell];~~
- (2) ~~Sell it [at wholesale]~~ in original packages to any ~~[person]~~ wholesaler who holds a license to resell it ~~[and to sell draught]; and~~
- (3) ~~Sell beer [or], wine [manufactured from grapes or other fruits grown in the State], or other specified liquor manufactured or distilled on the licensee's premises from fruits or other products grown in the State, in any quantity [to];~~
 - (A) At wholesale in original packages to any person who holds a license to resell it; and
 - (B) To any person for private use and consumption.

Under this license, no liquor shall be consumed on the premises, except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) Beer;
- (2) Wine;
- (3) Alcohol; and
- (4) Other specified liquor.

It shall be unlawful for any holder of a manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee. This subsection shall not prevent the holder of a manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a wholesale dealer licensee under this chapter.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

ACT 303

SECTION 3. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

ACT 303

H.B. NO. 302

A Bill for an Act Relating to the Probation Services Special Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 353B-6, Hawaii Revised Statutes, is amended to read as follows:

“~~§§353B-6~~ Interstate transfer fee. The judiciary may assess a fee not to exceed \$200 for each application made by a parolee or probationer for a transfer out of the State; provided that the fees collected shall be deposited into the ~~[State's general fund.]~~ probation services special fund established in section 706-649.”

SECTION 2. Section 706-649, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Moneys in the probation services special fund shall be used by the judiciary to ~~[monitor];~~

- (a) ~~Monitor and enforce[, and collect fees, fines, restitution, other monetary obligations owed by defendants, and other]~~ compliance with the terms and conditions of probation[-] and other supervision programs for defendants; and
- (b) Support other duties and activities related to the supervision of defendants.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

ACT 304

H.B. NO. 2491

A Bill for an Act Relating to the Hawaii Employer-Union Health Benefits Trust Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 87A, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

“§87A- Other post-employment benefits trust. Notwithstanding sections 87A-31 and 87A-31.5, the board, upon terms and conditions set by the board, may establish and administer a separate trust fund for the purpose of receiving employer contributions that will prefund other post-employment health and other benefit plan costs for retirees and their beneficiaries. If a fund is estab-

lished, it shall meet the requirements of the Government Accounting Standards Board regarding other post-employment benefits trusts. Employer contributions to the separate trust fund shall be irrevocable, all assets of the fund shall be dedicated exclusively to providing health and other benefits to retirees and their beneficiaries, and assets of the fund shall not be subject to appropriation for any other purpose and shall not be subject to claims by creditors of the employers or the board or plan administrator. The board's powers under section 87A-24 shall also apply to any fund established pursuant to this section."

SECTION 2. This Act shall not bind or require the State or counties to make any particular level of contributions to the Hawaii employer-union health benefits trust fund now or in the future, but only authorizes the board of trustees of the Hawaii employer-union health benefits trust fund to create a separate trust fund for the purpose of receiving contributions that meets the requirements of the Government Accounting Standards Board regarding health and other post-employment benefits trusts.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 305

H.B. NO. 2248

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Hawaii Pacific University.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$120,000,000, in one or more series, for the purpose of assisting Hawaii Pacific University, a private not-for-profit university, and one or more of its not-for-profit affiliates to finance, refinance, and reimburse costs related to the planning, acquisition, and construction of its educational facilities including student housing and athletic facilities, renovation of existing educational facilities, purchase of tangible assets including land and improvements, acquisition and installation of information technology, and other capital-related projects for Hawaii Pacific University and any one or more of its not-for-profit affiliates, including, without limitation, any costs that are necessarily or advisably incurred in order to provide such assistance or that are directly or indirectly related to any of the foregoing items. For the purposes of this Act, a limited liability company of which Hawaii Pacific University is the sole member shall be considered to be a not-for-profit affiliate of Hawaii Pacific University. The legislature hereby

finds and determines that the aforementioned activities and facilities constitute a project under part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit private nonsectarian university that serves the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department of budget and finance may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2017, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2017.

SECTION 7. This Act shall take effect on July 1, 2012.

(Approved July 9, 2012.)

ACT 306**H.B. NO. 2242**

A Bill for an Act Relating to Continuing Education for Veterinarians.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the profession of veterinary medicine has changed dramatically in the last ten years. Veterinary medicine is the only profession that routinely operates at the intersection of human and animal health. Veterinarians are challenged with the continuous development of new drugs; new

drug therapies; new treatment and modalities for animals, including the use of herbs and alternative drugs; and emerging diseases that affect both animals and humans, such as avian flu. Consumers depend on veterinarians to be fully informed and competent about the proper use of drugs and treatment for their animals. Currently, forty-seven states require continuing education for veterinarians.

The purpose of this Act is to require veterinarians in the State of Hawaii to complete a minimum of twenty credit hours of continuing education courses during each licensing biennium.

SECTION 2. Section 471-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

“Continuing education courses” means courses approved by the board of veterinary examiners, the Hawaii Veterinary Medical Association, the American Association of Veterinary State Boards’ Registry, or other board-approved organizations.

“Credit hour” means, except as otherwise provided, the value assigned to fifty minutes of instruction.”

SECTION 3. Section 471-9, Hawaii Revised Statutes, is amended to read as follows:

“§471-9 Licenses. (a) Except as otherwise provided in this [section,] chapter, the board of veterinary examiners shall issue a license [upon payment of a license fee] to engage in the practice of veterinary medicine to all persons meeting the requirements of this chapter[;] upon payment of a license fee.

(b) All licenses issued by the board shall expire on June 30 of each even-numbered year next following the date of issuance. Failure to renew the license on or before June 30 of each even-numbered year shall automatically constitute a forfeiture of the license; provided that the license shall be restored upon the submission of a written application, a renewal fee, a penalty fee, and proof of completing the applicable continuing education credits to the board.

(c) [Every veterinarian shall pay a biennial renewal fee in each even-numbered year. The payment of the renewal fee shall entitle the veterinarian to renewal of the license.] Prior to the June 30, 2016, payment deadline for license renewal, and prior to every license renewal thereafter, a licensee shall:

- (1) Pay all required fees; and
- (2) Complete at least twenty credit hours of continuing education within the two-year period preceding the renewal date.

(d) [Any holder of an expired license may be reinstated as a veterinarian upon payment of the renewal fee and a penalty fee.] A licensee who has graduated from an accredited veterinary school within one year of the licensee’s first license renewal shall not be subject to the continuing education requirement for the first license renewal.

(e) Each licensee shall be responsible for maintaining the licensee’s continuing education records. At the time of renewal, each licensee shall certify under oath that the licensee has complied with the continuing education requirement of this section. The board may require a licensee to submit, in addition to the certification, evidence satisfactory to the board that demonstrates compliance with the continuing education requirement of this section.

(f) The board may conduct random audits of licensees to determine compliance with the continuing education requirement. The board shall provide written notice of an audit to a licensee randomly selected for audit. Within sixty days of notification, the licensee shall provide the board with documentation verifying compliance with the continuing education requirement established by this section.

[~~(e)~~] (g) Notwithstanding any other provision, no license shall expire while the [~~holder thereof~~] licensee is serving on active duty in the armed forces of the United States during any emergency declared by the President or Congress and six months after the termination thereof."

SECTION 4. Section 471-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to any other actions authorized by law, the board may revoke or suspend the license of any veterinarian [~~or~~], fine [~~the~~] a licensee, or both, for any cause authorized by law, including but not limited to the following:

- (1) Professional misconduct, gross negligence, or manifest incapacity;
- (2) Violation of this chapter or the rules adopted pursuant thereto or any other law which applies to the licensee as a practicing veterinarian;
- (3) Making any false representations or promises through advertising or otherwise;
- (4) Habitual intemperance in the use of alcoholic beverages or addiction to the use of narcotic or dangerous substances;
- (5) Mental incompetence;
- (6) Any fraudulent, dishonest, or deceitful act in connection with the practice of veterinary medicine;
- (7) Making a false statement [~~in~~] on any document submitted or required to be filed by this chapter[~~;~~], including a false certification of compliance with the continuing education requirement;
- (8) Revocation, suspension, or other disciplinary action by another state of a license or certificate for reasons as provided in this section;
- (9) Conviction of or plea of nolo contendere to a penal offense substantially related to the qualifications, functions, or duties of a veterinarian, notwithstanding any statutory provision to the contrary;
- (10) Violation of chapter 329, the uniform controlled substances act, or any rule adopted pursuant thereto;
- (11) Failure to report any disciplinary action taken against [~~a~~] the licensee in another jurisdiction within thirty days after the disciplinary action becomes final; or
- (12) Conduct or practice contrary to the recognized principles of medical ethics of the veterinary profession as adopted by the Hawaii Veterinary Medical Association and the American Veterinary Medical Association."

SECTION 5. The board of veterinary medicine shall provide written notification of the contents of this Act to all persons licensed under chapter 471, Hawaii Revised Statutes, within ninety days of the effective date of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

ACT 307

H.B. NO. 1974

A Bill for an Act Relating to Veterans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 363-5, Hawaii Revised Statutes, is amended to read as follows:

“§363-5 Councils’ responsibility; burial of ~~[serviceemen,]~~ service members, veterans, and dependents. (a) The councils of the counties of Hawaii, Kauai, and Maui shall each provide for the establishment of the veterans cemetery or cemeteries to be located within their respective counties, which includes grading, filling, leveling, platting, paving of roadways and walks, installation of curbs, building of fences, planting of grass, trees and shrubs, erection of memorial buildings and monuments, and building of other necessary or convenient structures, and shall make provisions for the maintenance and upkeep of ~~[such]~~ the cemetery or cemeteries. The councils shall each provide for the interment of the remains~~[-]~~ of:

- (1) ~~[residents or former residents of their respective counties]~~ Service members who died while in the armed forces of the United States~~[-]~~ and~~[-]~~;
- (2) ~~[of honorably discharged veterans of the armed forces of the United States with either peacetime or wartime service and who are residents of their respective counties at the time of death, or who were former residents, and]~~ Eligible veterans who entered military service after September 7, 1980, as an enlisted person, or after October 16, 1980, as an officer, and served a minimum of twenty-four continuous months or the full period for which the person was called to active duty, as in the case of a reservist;
- (3) ~~[of the widows, widowers, or minor children of such deceased serviceemen or veterans, and]~~ Eligible veterans who were discharged under conditions other than dishonorable of the armed forces of the United States with either peacetime or wartime service; and
- (4) ~~[of the]~~ The wife, husband, [or] minor children, or unmarried disabled adult children, who predecease a [serviceeman] service member or veteran who would be [himself] entitled to interment [provided that he must subscribe to a statement that he himself will be so interred in the same], in any state veterans cemetery[-] and provided further that as to former residents, the].

The cost of transportation of the remains to the county of interment shall be borne by the family or estate of the deceased.

(b) The determination of eligibility for burial within any state veterans cemetery shall be in accordance with current Veterans Affairs and National Cemeteries Administration Regulations.”

SECTION 2. Section 363-7, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that on June 30, 2015, this Act shall be repealed and section 363-5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that a strong public library system contributes to the economic, educational, and cultural vitality of the State.

The legislature further finds that under existing law, the state librarian may issue licenses, revocable permits, concessions, and rights of entry to only two entities: the Hawaii State Library Foundation and Friends of the Library of Hawaii. The legislature finds that there are other private entities that may be able to provide an equal or greater benefit to the Hawaii state public library system if given an equal opportunity to participate.

The purpose of this Act is to, among other things:

- (1) Authorize the board of education to enter into certain arrangements or contracts, approved by the governor, with any 501(c)(3) tax-exempt nonprofit corporation whose primary purpose is the support of a state library branch;
- (2) Amend section 312-3.7, Hawaii Revised Statutes, to require that the results of the annual audit of the Hawaii state library foundation trust fund be submitted to the legislature and the board of education;
- (3) Authorize the head librarian of each library branch to receive requests for and to issue licenses, revocable permits, concessions, or rights of entry for the use of library facilities and grounds, with the approval of the state librarian, in consultation with the board of education;
- (4) Authorize affiliates of the Friends of the Library of Hawaii and certain nonprofit organizations supporting state library branches to use state library facilities for concessions, vending machines, and other activities and to maintain their own accounts for the net proceeds under specified conditions;
- (5) Require that the Friends of the Library of Hawaii and specified tax-exempt nonprofit organizations report on the proceeds and accounts; and
- (6) Authorize the board of education to adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to carry out the purposes of section 312-3.8, Hawaii Revised Statutes.

It is the intent of the legislature that this Act will provide the opportunity for every individual and every entity to support their public library at the community level. Nothing in this Act should be construed to limit the ability of individuals and entities to support their local libraries.

SECTION 2. Section 312-2, Hawaii Revised Statutes, is amended to read as follows:

“§312-2 Powers of board; special fund. The board of education may:

- (1) Except as provided in section 312-3.9, make arrangements or contracts as are approved by the governor, with any county, city, association, society, person, or persons, for the purpose of benefiting the libraries and increasing their facilities and use;
- (2) Subject to section 26-12, enter into such arrangement or contract as is approved by the governor, with the Friends of the Library of Hawaii, affiliates of the Friends of the Library of Hawaii, and

any tax-exempt nonprofit organization recognized under section 501(c)(3) of the Internal Revenue Code whose primary purpose is to support a state library branch for the purpose of obtaining the use of the books and property and income of the Friends of the Library of Hawaii[;], its affiliates, and such tax-exempt nonprofit organizations;

- (3) Cooperate by exchange and otherwise with libraries now existing or hereafter to be formed;
- (4) Receive, use, manage, or invest moneys or other property, real, personal, or mixed which may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for any or all purposes of the libraries;
- (5) Deposit with the director of finance in a special fund all moneys donated to the board for library services;
- (6) Unless otherwise provided for by the terms and conditions of the donation, convert, at such time as the board may at its sole discretion determine, any or all donations of property, real, personal, or mixed, into money to be deposited into the special fund; and
- (7) Expend the moneys in the special fund in accordance with the terms and conditions of each donation for the purposes of the libraries.

The board shall be the trustee of the special fund and all moneys therein shall be deemed to have been appropriated to the use and for the purposes of the board in providing library services. Nothing in this section shall be construed to limit the powers and duties of the board hereinbefore expressed, or to empower the board to obligate the State financially in any sum which shall not have been appropriated by the legislature for the use of the board."

SECTION 3. Section 312-3.7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The Hawaii state library foundation shall require an annual audit of the trust fund, the results of which shall be submitted to the [department] board of education and the legislature not more than thirty days after receipt by the foundation. The foundation shall retain for a period of three years, any documents, papers, books, records, and other evidence that is pertinent to the trust fund, and permit inspection or access thereto by the [department] board of education, the state librarian, the department of accounting and general services, state legislators, and the state auditor, or their duly authorized representatives."

SECTION 4. Section 312-3.8, Hawaii Revised Statutes, is amended to read as follows:

"§312-3.8 ~~[Hawaii state library foundation and friends of the library of Hawaii concessions; use]~~ Use of public library facilities. (a) Notwithstanding any law to the contrary, the ~~[Hawaii state public library system, through the state librarian, shall be authorized to issue]~~ head librarian of each library branch may request the issuance of licenses, revocable permits, concessions, or rights of entry to [the Hawaii state library foundation and the friends of the library of Hawaii and¹];

- (1) The Friends of the Library of Hawaii;
- (2) Affiliates of the Friends of the Library of Hawaii, through and with approval of the Friends of the Library of Hawaii; and
- (3) Any tax-exempt nonprofit organization recognized by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code whose primary purpose is to support a state library branch.

for the use of public library system facilities and grounds, with the approval of the state librarian, in consultation with the board of education,² for such periods of use as deemed appropriate by the state librarian. The state librarian shall administer any licenses, revocable permits, concessions, or rights of entry issued pursuant to this section. All such dispositions, including those in excess of fourteen days, need not be approved by the board of land and natural resources; provided that approval by the board of land and natural resources shall be required when such dispositions are for periods in excess of one year.

(b) Notwithstanding any law to the contrary, all net [income or] proceeds received by [the Hawaii state library foundation and the friends of the library of Hawaii] the Friends of the Library of Hawaii from the operation of any concession, vending machine, or other [for-profit business enterprise] activity through a state-wide contract within, or on the grounds of, any state library facility shall be deposited into the [Hawaii state library foundation trust fund or the friends of the library of Hawaii trust fund, as appropriate.] Friends of the Library of Hawaii trust fund. All funds deposited into the trust [funds,] fund, including income and capital gains earned therefrom, shall be used exclusively for state library programs.

(c) Notwithstanding any law to the contrary, all net proceeds received by the Friends of the Library of Hawaii, an affiliate of the Friends of the Library of Hawaii, or any nonprofit organization from the operation of any concession, vending machine, or other activity within, or on the grounds of, any state library facility shall be deposited into an account in a federally insured financial institution, with such account being held in that organization's name and controlled exclusively by that organization, which shall have sole authority and discretion in the disbursement of its funds. All funds deposited into the account, including income and capital gains earned therefrom, shall be used exclusively for the state library or libraries that the Friends of the Library of Hawaii, affiliate of the Friends of the Library of Hawaii, or nonprofit organization is organized to support.

(d) No later than September 30 of each year, the Friends of the Library of Hawaii and any nonprofit organization that has been issued a license, revocable permit, concession, or right of entry for the use of state public library system facilities and grounds shall submit to the state librarian an annual financial statement. The annual financial statement shall include:

- (1) The name and address of any financial institution in which the net proceeds from the operation of any concession, vending machine, or other activity within, or on the grounds of, any state library facility were deposited and held;
- (2) The name of any account, account number, and balance of all such accounts;
- (3) A reasonable description of deposits into the account; and
- (4) A reasonable description of withdrawals and disbursements including how the withdrawals and disbursements were used to support the appropriate state library.

The annual financial statement of the Friends of the Library of Hawaii shall include the financial statements, satisfying the criteria set forth above, of all of its affiliates that were issued a license, revocable permit, concession, or right of entry for the use of state library system facilities and grounds.

(e) The Friends of the Library of Hawaii, affiliates of the Friends of the Library of Hawaii, and any nonprofit organization that receives net proceeds from the operation of any concession, vending machine, or other activity within, or on the grounds of, any state library facility shall keep true and accurate records as to their activities in a form that will accurately provide support for the

information required by this section. Upon demand, the records shall be made available to the state librarian for inspection. Records shall be retained for a period of not less than five years.

(f) The state librarian shall, upon ten days notice, revoke any license, permit, concession, or right of entry issued if the Friends of the Library of Hawaii, any affiliate of the Friends of the Library of Hawaii, or any tax-exempt nonprofit organization recognized by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code whose primary purpose is to support a state library branch fails to comply with any provision of this section, including the submission of an annual financial statement. The state librarian may, at the state librarian's discretion, in consultation with the board of education, re-issue a license, permit, concession, or right of entry upon compliance with this section.

(g) For purposes of this section:

"Affiliate of the Friends of the Library of Hawaii" means any organization or entity that enters into a written agreement with the Friends of the Library of Hawaii to be an affiliate. The affiliate is not required to be recognized by the Internal Revenue Service as a tax-exempt nonprofit organization.

"Net proceeds" means all revenue generated from the operation of any concession, vending machine, or other activity within, or on the grounds of, any state library facility minus the costs incurred in generating those revenues, including but not limited to payments to third-party vendors and any expenses associated with operating the organization.

(h) The board of education may adopt rules pursuant to chapter 91 to carry out the purpose of this section."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

Notes

1. So in original.
2. Prior to amendment "and" appeared here.

ACT 309

S.B. NO. 2534

A Bill for an Act Relating to Public School Facilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 171C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§171C- School facilities special fund. (a) There is established a school facilities special fund into which shall be deposited all proceeds from leases, permits, interest income generated from public school lands and facilities, and other revenue generated from the non-permanent disposition of public school lands and facilities under this chapter, less the following:

- (1) The principal and interest on bonds issued pursuant to this chapter for projects on public school lands or utilizing public school facilities;
- (2) The cost of administering, operating, and maintaining projects on public school lands or utilizing public school facilities, not to exceed fifteen per cent of the sums collected, net of principal and interest payments on bonds; and
- (3) Other sums that may be necessary for the issuance of bonds under this chapter.

(b) The school facilities special fund shall be administered by the department of education in consultation with the board of education. Except as otherwise provided, all moneys in the school facilities special fund shall be used exclusively for the new construction and upgrade of twenty-first century school facilities, and the retrofit and upgrade of existing school facilities to meet twenty-first century school standards.”

SECTION 2. Section 171C-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the Hawaii public land development revolving fund, to which shall be credited any state appropriations to the fund, any sums collected as a result of bonds issued pursuant to this chapter, any revenues generated from the facilities, except as provided in section 171C- , or other moneys made available to the fund, to be expended as directed by the corporation.”

SECTION 3. The public land development corporation shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2013 detailing the progress made with the school facilities special fund, including sites being considered for non-permanent disposition and the process the corporation is employing to select where the construction of new facilities and retrofitting of existing facilities to meet twenty-first century school standards will be done.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 310

S.B. NO. 2506

A Bill for an Act Relating to Civil Identification.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the United States enacted the REAL ID Act of 2005, P.L. 109-13. The REAL ID Act sets forth in title II, specifically sections 201 and 202, the kind of documentation required and procedures to be followed in issuing driver’s licenses and non-driver’s, or civil, identification cards. Pursuant to section 37.51 of title 6 of the Code of Federal Regulations,

as amended, volume 76 issue 44 Federal Register pages 12269-12271 (March 7, 2011), the REAL ID Act must be implemented by January 15, 2013.

The legislature further finds that driver's licenses and non-driver's identification cards that do not comply with the REAL ID Act on or after January 15, 2013, will not be recognized by federal agencies, such as the Transportation Security Administration, and may not be recognized by other states. The REAL ID Act must be implemented on a timely basis in order to permit Hawaii's people to travel and to do business with the federal government and other states.

The legislature also finds that Hawaii is unique in that the counties, under the general supervision of the director of transportation, have been delegated the function of implementing the state driver's license program since 1937. Under current law, the department of the attorney general issues non-driver's, or civil, identification cards. It is imperative that the two functions be combined in order to comply with the REAL ID Act.

The purpose of this Act is to:

- (1) Consolidate the driver's license and civil identification programs for the State of Hawaii under the director of transportation;
- (2) Allow county examiners of drivers to issue civil identification cards; and
- (3) Ensure this consolidation effort and full implementation of this Act to be accomplished by January 15, 2013.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding a new subpart to part VI to be appropriately designated and to read as follows:

"B. CIVIL IDENTIFICATION CARDS

§286-A Issuance of identification card or temporary card. (a) To obtain an identification card from the examiner of drivers, an individual shall complete an application pursuant to section 286-C.

(b) The examiner of drivers, upon receipt of the application by any individual who is a resident or a temporary resident of this State, shall issue an identification card to that individual upon receipt of any appropriate fee established pursuant to section 286-I.

(c) The identification card shall be similar in size, shape, and design to a driver's license, but shall not entitle the individual to whom it is issued to operate a motor vehicle.

(d) The issuance of an identification card pursuant to this section shall not place upon the State of Hawaii or any agency any liability for the misuse or the acceptance of the identification card as valid identification, which shall be left entirely to the discretion of any individual to whom such card is presented.

§286-B Oaths and investigations. The examiner of drivers and each authorized subordinate may administer oaths and require and take oral or written statements under oath of any individual in connection with any information required under this subpart or any rule under this part.

§286-C Application for identification card. (a) Application for the identification card shall be made in person by any adult or minor. The minimum age for minors to obtain an identification card shall be ten years of age. In the case of a minor under the age of fourteen years, the application shall be made on the minor's behalf by the parent, or by another individual in loco parentis of the minor who can provide proof of guardianship. In the case of an incompetent

individual, the application shall be made by the individual having the custody or control of or maintaining the incompetent individual.

(b) Application for renewal of an identification card issued after November 1, 1998, for an individual eighty years of age or older may be done by mailing in a completed application and fee, if there is no change in name and citizenship status. The director shall adopt rules to allow for renewal by mail for individuals with physical or intellectual disabilities for whom application in person presents a serious burden.

(c) Every application for an identification card or duplicate of an identification card shall be made on a form developed by the director and furnished by the examiner of drivers, signed by the applicant, and signed by the applicant's parent or guardian if the applicant is under eighteen years of age. The application shall contain the following information:

- (1) Name and complete address, including the number and street name, of the applicant's permanent residence;
- (2) The applicant's occupation and any pertinent data relating thereto;
- (3) The applicant's citizenship status;
- (4) The applicant's date and place of birth;
- (5) General description of the applicant, including the applicant's gender, height, weight, hair color, and eye color;
- (6) The applicant's left and right index fingerprints or, if clear impressions cannot be obtained, other identifying imprints as specified by rules of the director;
- (7) The social security number of the applicant; and
- (8) A digitized frontal photograph of the applicant's full face.

Each applicant shall present documentary evidence as required by the examiner of drivers of the applicant's age and identity, and the applicant shall swear or affirm that all information given is true and correct.

(d) The application also shall state whether the applicant has an advance health-care directive. If the applicant has an advance health-care directive, the identification card shall bear the designation "AHCD".

(e) The examiner of drivers, in accordance with section 11-15, at the time of application, shall make available an application for voter registration to every applicant for an identification card who is eligible to register to vote.

(f) The examiner of drivers shall maintain a suitable, indexed record of all applications.

(g) For the purpose of this section, "AHCD", which stands for "advance health-care directive", means an individual instruction in writing, a living will, or a durable power of attorney for health care decisions.

§286-D Procedure. (a) All information required by section 286-C shall be obtained by employees of the examiner of drivers as provided for by rules of the director and by individual interviews with the applicant for the identification card or parent, individual in loco parentis, or guardian, as shown by letters of guardianship. Every applicant or individual providing information on behalf of any applicant under this part shall answer truthfully all questions, furnish all information within the possession or knowledge of the individual that may be asked or required by the employee within the scope of the requirements of this subpart, and submit to the examiner of drivers all information and supporting documentation required by rules of the director.

(b) Special provisions may be made by rules adopted by the director.

(c) The examiner of drivers may require an applicant, or any individual providing information on behalf of an applicant, to furnish original or certified copies of documents to establish or corroborate the information required to es-

establish identity under this subpart and may, by rules, set forth what documents will be required to support or corroborate certain information.

§286-E Contents and characteristics; form. (a) Each identification card issued by the examiner of drivers shall display a distinguishing number assigned to the cardholder, and shall display the following inscription:

“STATE OF HAWAII IDENTIFICATION CARD”

(b) The examiner of drivers, after obtaining the fingerprint of the applicant as provided in this subpart and after obtaining the information required by or pursuant to this subpart, shall issue to each applicant an identification card in a form and with identifying information that the director deems necessary and appropriate.

(c) The identification card shall not display the cardholder’s social security number.

(d) The identification card shall be designed to prevent its reproduction or alteration without ready detection.

(e) The identification card for individuals under twenty-one years of age shall have characteristics prescribed by the examiner distinguishing it from that issued to a individual who is twenty-one years of age or older.

§286-F Expiration; renewal; replacement. (a) Every identification card issued under this subpart, whether an original or a renewal, shall bear an expiration date that shall be the date and month of the individual’s birthday eight years after the year of issuance; provided that if the individual is a legal nonimmigrant, the certificate shall bear an expiration date that is the same as the expiration date on the individual’s arrival-departure record, CBP Form I-94. A cardholder may renew the cardholder’s identification card within six months before the day on which it expires by filing an application in accordance with section 286-C and paying the prescribed fee established by rules of the director.

(b) If an identification card is lost, destroyed, stolen, or mutilated, the individual to whom the identification card was issued may obtain a duplicate by paying the fee established by rules of the director and by:

- (1) Furnishing suitable proof of the loss, destruction, or mutilation to the examiner; and
- (2) Filing an application and presenting documentary evidence under section 286-C.

Any individual who loses an identification card and, after obtaining a duplicate, finds the original, shall immediately surrender the original to the examiner.

(c) The examiner of drivers shall cancel any identification card upon determining that the identification card was obtained unlawfully, issued in error, or altered. The examiner also shall cancel a REAL ID compliant identification card that is surrendered to the examiner of drivers after the cardholder has obtained a duplicate or replacement REAL ID compliant identification card, or if a REAL ID-compliant driver’s license has been previously issued.

(d) No agent of the State or its political subdivisions shall condition the granting of any benefit, service, right, or privilege upon the possession by any individual of an identification card. Nothing in this section shall preclude any publicly operated or franchised transit system from using an identification card for the purpose of granting benefits or services of the system. No individual shall be required to apply for, carry, or possess an identification card.

§286-G Identification cards not to be altered; duties of holder; lost certificates. (a) No individual, except agents of the examiner acting pursuant to the

authority of law, shall alter, deface, or destroy any identification card. Except as specifically authorized by this section or the rules of the director, no cardholder shall loan or give the individual's identification card to any other individual, and no individual shall use the identification card of any other individual.

(b) Any individual whose identification card is stolen or otherwise lost, altered, defaced, or destroyed, may at any time apply for a duplicate identification card. The duplicate shall be issued by the examiner of drivers upon being satisfied as to the loss, alteration, defacing, or destruction. In the case of an altered or defaced identification card, the identification card, if available, shall be surrendered by the cardholder and canceled by the examiner.

(c) Any individual finding or coming into possession of the identification card of any other individual shall promptly return or deliver the same to the owner thereof, the examiner of drivers that issued it, or any law enforcement officer.

§286-H Correction or alteration of records and identification cards in cases of error or subsequent changes concerning names, citizenship, description, etc. (a) A cardholder who, after receiving an identification card, has a change in one or more of the following:

- (1) Name, legally changed by marriage, divorce, adoption, legitimization, order of the lieutenant governor, or other legal means;
- (2) Citizenship status;
- (3) Address; or
- (4) Individual in charge of the cardholder (in the case of a minor or incompetent individual),

within thirty days after the change, shall report the change, submit supporting documents, and present the cardholder's identification card to the examiner. The examiner of drivers, upon being furnished with satisfactory proof as to the change, and receiving payment of the fee, shall cancel the identification card and issue a new identification card bearing the new name, citizenship status, or address of the cardholder, making appropriate notation of the facts upon the records of the examiner.

(b) If any error has been made in any item of information contained in the records of the examiner of drivers or on the identification card concerning any cardholder, the examiner of drivers or the cardholder, upon application and upon provision of evidence satisfactory to the examiner that an error has been committed, may correct the error and, in such case, shall make appropriate changes or notations stating the error and the correct information in the records of the examiner of drivers and on the identification card.

(c) If any item of the cardholder's personal information was originally correct, but will change after issuance of the identification card and the examiner of drivers finds the change material, the examiner of drivers may register the change and alter the records and identification card to conform thereto, upon receipt of satisfactory evidence of the change and approval of the examiner.

§286-I Rules. For the purpose of carrying out this subpart, the director, pursuant to chapter 91, shall adopt rules including rules assessing reasonable fees for the services provided under this subpart. The rules shall authorize the examiner of drivers to waive any fee in cases of extreme hardship and provide criteria for determining whether a waiver is warranted.

§286-J Forms. The director may prepare, prescribe, and furnish, in conformity with this subpart, forms for questionnaires, notices, fingerprint cards or forms, certificates of identification, instructions, and all other forms necessary

or proper for the prompt, efficient, and adequate execution of the functions of the examiner of drivers set forth in this subpart.

§286-K Custody and use of records; confidential information. (a) All information and records acquired by the examiner of drivers under this subpart shall be confidential. All information and records shall be maintained in an appropriate form and in an appropriate office in the custody and under the control of the examiner. The information shall be available only to authorized individuals under such restrictions as the director shall prescribe. The examiner may dispose of any application or identification card, or information or record relating to the application or identification card, which does not include a social security number, without regard to chapter 94, whenever, in the examiner's discretion, retention of the information or record is no longer required or practicable.

(b) No officer or employee of the examiner of drivers shall divulge any information concerning any cardholder acquired from the records of the examiner or acquired in the performance of any of the officer's or employee's duties under this part to any individual not authorized to receive the same pursuant to this part. No individual acquiring from the records any information concerning any cardholder shall divulge the information to any individual not so authorized to receive the same.

§286-L Civil identification card fee special fund. There is established in the state treasury a special fund to be known as the civil identification card fee special fund. The fund shall consist of all fees assessed for the processing and issuance of identification cards. The fund shall be used for the purposes of the identification card program. The fund shall be administered by the director. The fund shall be held separate and apart from all other moneys, funds, and accounts in the state treasury. Interest and investment earnings credited to the assets of the fund shall become a part of the fund. Any balance remaining in the fund at the end of any fiscal year shall be carried over to the next fiscal year.

§286-M Reimbursement to counties. The counties shall be reimbursed the incremental costs incurred in the administration of this subpart. The amount of reimbursement shall be determined by the director of transportation."

SECTION 3. Section 286-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“Identification card” means a document made or issued under part VI that, when completed with information concerning a particular individual, is intended solely for the purposes of civil identification.”"

SECTION 4. Section 128-6, Hawaii Revised Statutes, is amended to read as follows:

“§128-6 Civil defense powers, in general. The governor may:

- (1) Plans and programs. Prepare comprehensive plans and programs for the civil defense of this State, the plans and programs to be integrated into and coordinated with the civil defense plans of the federal government and of other states to the fullest possible extent; and coordinate the preparation of plans and programs for civil defense by the political subdivisions of the State, the plans to be integrated into and coordinated with the civil defense plans and programs of the State to the fullest possible extent;

- (2) Training, public information. Institute training programs and public information programs;
- (3) Direct operational control, when. In the event of disaster or emergency beyond local control, or which in the opinion of the governor is such as to make state operational control necessary, assume direct operational control over all or any part of the civil defense functions within this State;
- (4) Insignia. Provide or authorize suitable insignia of authority for all authorized personnel;
- (5) Registration and blood typing. Provide for:
 - (A) Compulsory registration and identification to the extent that voluntary registration and identification has not been accomplished under chapter [846, ~~part H;~~] 286, part VI, subpart B; and
 - (B) Compulsory RHo blood typing on females of child bearing age or younger, and such other compulsory blood typing as may be approved by competent medical authority;
- (6) Protection of facilities. Require each public utility, or any person owning, controlling, or operating a vital facility, to protect and safeguard its or the person's property, or to provide for the protection and safeguarding; and provide for the protection and safeguarding of all public properties, or such other properties as the governor may consider advisable; provided that without prejudice to the generality of the foregoing two clauses, the protecting and safeguarding may include the regulation or prohibition of public entry thereon, or the permission of the entry upon such terms and conditions as the governor may prescribe;
- (7) Explosives, etc. Except as provided in section 134-7.2, whenever in the governor's opinion the laws of the State do not adequately provide for the common defense, public health, safety, and welfare, investigate, regulate, or prohibit the storage, transportation, use, possession, maintenance, furnishing, sale, or distribution of, as well as any transaction related to, explosives, firearms, and ammunition, inflammable materials and other objects, implements, substances, businesses, or services of a hazardous or dangerous character, or particularly capable of misuse by disloyal persons or the enemy, or obstructive of or tending to obstruct military operations or civil defense, including, without limitation, intoxicating liquor and the liquor business; and authorize the seizure and forfeiture of any such objects, implements, or substances unlawfully possessed, as provided in section 128-28; and
- (8) Air raid drills, etc. Direct or control, as may be necessary for civil defense:
 - (A) Air raid drills, and other alerts, tests, and exercises;
 - (B) Blackouts and practice blackouts;
 - (C) Partial or full mobilization of civil defense organizations in advance of actual disaster;
 - (D) Warnings and signals for drills, alerts, or attacks, and the mechanical devices to be used in connection therewith;
 - (E) Shutting off water mains, gas mains, electric power connections, or suspension of other services; and to the extent permitted by or under federal law, suspension of radio transmission;

- (F) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, before, and after blackouts, drills, alerts, or attacks;
- (G) Traffic control;
- (H) The congregation of the public in stricken or danger areas or under dangerous conditions; and
- (I) The evacuation and reception of the civilian population; provided that only during a civil defense emergency period shall there be instituted under this paragraph mandatory or prohibitory requirements having the force and effect of law."

SECTION 5. Chapter 286, Hawaii Revised Statutes, is amended by amending the title of part VI to read as follows:

"PART VI. MOTOR VEHICLE DRIVER LICENSING AND CIVIL IDENTIFICATION CARDS"

SECTION 6. Chapter 286, Hawaii Revised Statutes, is amended by designating sections 286-101 to 286-140, as subpart A and inserting a title before section 286-101, to read as follows:

"A. MOTOR VEHICLE DRIVER LICENSING"

SECTION 7. Section 286-102, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No person shall receive a driver's license without surrendering to the examiner of drivers all valid driver's licenses and all valid identification cards in the person's possession. All licenses and identification cards so surrendered shall be returned to the issuing authority, together with information that the person is licensed in this State; provided that with the exception of driver's licenses issued by any Canadian province, a foreign driver's license may be returned to the owner after being invalidated pursuant to issuance of a Hawaii license; and provided further that the examiner of drivers shall notify the authority that issued the foreign license that the license has been invalidated and returned because the owner is now licensed in this State. No person shall be permitted to hold more than one valid driver's license at any time."

SECTION 8. Sections 286-101, 286-102(e), 286-104, 286-106, 286-107(c), 286-108(a), 286-110(a), 286-112(a) and (c), 286-113, 286-114, 286-122(a), 286-123, 286-125, 286-134, 286-136(a), and 286-137, Hawaii Revised Statutes, are amended by substituting the phrase "this subpart" wherever the phrase "this part" appears.

SECTION 9. Chapter 846, part II, Hawaii Revised Statutes, is repealed.

SECTION 10. To provide for the transition to issuance of civil identification cards by the examiner of drivers, all valid and unexpired civil identification cards issued by the department of the attorney general up to and including December 31, 2012, shall remain valid for all purposes until their stated expiration date.

SECTION 11. All rights, powers, functions, and duties of the department of the attorney general as they relate to the civil identification program are transferred to the department of transportation; provided that the department

of the attorney general shall retain such authority as necessary to ensure uniformity in the issuance of identification cards.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

All employees who occupy civil service positions and whose functions are transferred to the department of transportation or the examiners of drivers of the respective counties, pursuant to a plan approved by the State and the counties, shall retain their civil service status (permanent or temporary). Employees shall be transferred without loss of salary, seniority, retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act, provided that the employees possess the minimum qualifications and public employment requirements for the class and/or position to which transferred or appointed, as applicable, provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any employee who, prior to this Act, is exempt from civil service and is transferred as a consequence of this Act, may continue to retain the employee's exempt status, but shall not be appointed to a civil service position because of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, any vacation and sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act, provided that the employees possess legal and public employment requirements for the position to which transferred or appointed, as applicable; provided that subsequent changes in status may be made pursuant to applicable employment and compensation laws. The director of transportation or the examiners of drivers of the respective counties, pursuant to a plan approved by the State and counties, may prescribe the duties and qualifications of such employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes.

SECTION 12. All rules adopted by the attorney general to implement the provisions of part II, chapter 846, Hawaii Revised Statutes, the substance of which is made applicable to the director of transportation under this Act, shall remain in full force and effect until amended or replaced by the director of transportation pursuant to rules adopted pursuant to chapter 91, Hawaii Revised Statutes.

All rules adopted by the attorney general, deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of the attorney general or the attorney general pursuant to the provisions of the Hawaii Revised Statutes that are reenacted or made applicable to the department of transportation or director of transportation by this Act, shall remain in full force and effect. From January 1, 2013, every reference to the department of the attorney general or the attorney general shall be construed as a reference to the department of transportation or the director of transportation, as appropriate.

SECTION 13. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, balances in the state identification revolving fund, and other personal property heretofore made, used, acquired, or held by the department of the attorney general relating to the functions transferred to the department of transportation shall be transferred with the functions to which they relate.

SECTION 14. The balance of all unexpended or unencumbered moneys in the state identification revolving fund, established by section 846-27, Hawaii Revised Statutes, as of the effective date of this Act shall be transferred to the civil identification card fee special fund, established by section 286-L, Hawaii Revised Statutes, on the effective date of this Act.

SECTION 15. This Act shall be liberally construed to accomplish the purposes set forth in section 1 of this Act.

SECTION 16. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 17. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 18. All laws and parts of laws heretofore enacted that are in conflict with the provisions of this Act are hereby amended to conform herewith.

SECTION 19. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 20. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 21. This Act shall take effect on January 1, 2013.

(Approved July 9, 2012.)

ACT 311

S.B. NO. 2871

A Bill for an Act Relating to Commercial Driver's License.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§291- Mobile electronic devices; use while operating a commercial motor vehicle prohibited. (a) No person with a commercial driver's license shall use a mobile electronic device, including using the mobile electronic device for texting as defined under section 286-231, while operating a commercial motor vehicle, as defined under section 286-2.

(b) The use of a mobile electronic device for the sole purpose of making a “911” emergency communication shall be an affirmative defense to this section.

(c) The following persons shall be exempt from the provisions of subsection (a):

- (1) Emergency responders using a mobile electronic device while in the performance and scope of their official duties;
 - (2) Drivers using two-way radios while in the performance and scope of their work-related duties and who are operating motor carrier vehicles as defined in section 286-201; and
 - (3) Drivers holding a valid amateur radio operator license issued by the Federal Communications Commission and using a half-duplex two-way radio.
- (d) Any person who is convicted of violating subsection (a) shall be fined not more than \$2,750 in addition to the driving disqualification of section 286-240(e).

(e) As used in this section:

“Emergency responders” means any firefighters, emergency medical technicians, mobile intensive care technicians, civil defense workers, police officers, and federal and state law enforcement officers.

“Mobile electronic device” means any handheld or other portable electronic equipment recognized by the citing officer or other witness to be capable of providing wireless or data communications, or both, between two or more persons or of providing amusement, including but not limited to a cellular phone, text messaging device, paging device, personal digital assistant, laptop computer, video game, or digital photographic device, or any device to input, write, send, receive, or read text, but does not include any equipment installed in a commercial motor vehicle for the purpose of providing audio, navigation, or emergency assistance to the operator of the commercial motor vehicle or video entertainment to the passengers in the rear seats of the commercial motor vehicle. A “two-way radio” or Private Land Mobile Radio System as defined by Title 47 of the Code of Federal Regulations, Part 90, when used for business purposes, shall not be considered to be a “mobile electronic device”.

“Operate a commercial motor vehicle” means to drive or assume actual physical control of a commercial motor vehicle upon a public way, street, road, or highway in the State.

“Texting” means the same as defined under 286-231.

“Use or using a mobile electronic device” means holding a mobile electronic device while operating a commercial motor vehicle.”

SECTION 2. Section 286-231, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Texting” means manually entering alphanumeric text into, or reading text from, an electronic device, and includes short message service; e-mailing; instant messaging; a command or request to access a world wide web page; and engaging in any other form of electronic text retrieval or entry, for present or future communication.

“Texting” does not include:

- (1) Reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;
- (2) Inputting, selecting, or reading information on a global positioning system or navigation system; or
- (3) Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smart phones,

citizens band radios, and music players, for a purpose that is not otherwise prohibited in this part.”

2. By amending the definition of “serious traffic violation” to read: ““Serious traffic violation” means conviction of any of the following offenses when operating a commercial motor vehicle, except for weight, defect, and parking violations:

- (1) Excessive speeding[;] involving any single offense for any speed of fifteen miles per hour or more above the posted speed limit;
- (2) Reckless driving[;] or driving a commercial motor vehicle in disregard of the safety of persons or property, including but not limited to offenses of driving a commercial motor vehicle in wilful or wanton disregard for the safety of persons or property;
- (3) Improper or erratic traffic lane changes;
- (4) Following a vehicle ahead too closely;
- (5) A violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal traffic accident;
- (6) Driving a commercial motor vehicle without obtaining a commercial driver’s license;
- (7) Driving a commercial motor vehicle without a commercial driver’s license in the driver’s possession; provided that this paragraph shall not apply to a citation issued under, or an offense disposed of pursuant to[;] section 286-116(a) or a substantially similar provision of law in another state; [øø]
- (8) Driving a commercial motor vehicle without the proper class or endorsements of commercial driver’s license for the specific vehicle group being operated or for the passengers or type of cargo being transported[;]; or
- (9) Texting while driving in violation of a state or county law or ordinance.”

SECTION 3. Section 286-235, Hawaii Revised Statutes, is amended to read as follows:

“§286-235 Commercial driver’s license required. (a) No person shall drive a commercial motor vehicle unless the person holds a valid commercial driver’s license and valid applicable endorsements for the vehicle the person is driving, except when driving under a commercial driver’s instruction permit and accompanied by the holder of a valid commercial driver’s license for the vehicle being driven.

(b) No person shall operate a commercial motor vehicle without a commercial driver’s license in such person’s possession.

~~[(b)]~~ (c) No person shall drive a commercial motor vehicle while the person’s driver’s license or permit is suspended, revoked, or canceled, or while subject to a disqualification.

~~[(e)]~~ (d) No person shall drive a commercial motor vehicle in violation of an out-of-service order.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 312

S.B. NO. 2873

A Bill for an Act Relating to Environmental Impact Statements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 343, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§343- Exception to applicability of chapter. (a) Notwithstanding any other law to the contrary, for any primary action that requires a permit or approval that is not subject to a discretionary consent and that involves a secondary action that is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right-of-way or highway, that secondary action shall be exempt from this chapter; provided that the applicant for the primary action shall submit documentation from the appropriate agency confirming that no further discretionary approvals are required.

(b) As used in this section:

“Discretionary consent” means:

- (1) An action as defined in section 343-2; or
- (2) An approval from a decision-making authority in an agency, which approval is subject to a public hearing.

“Infrastructure” includes waterlines and water facilities, wastewater lines and wastewater facilities, gas lines and gas facilities, drainage facilities, electrical, communications, telephone, and cable television utilities, and highway, roadway, and driveway improvements.

“Primary action” means an action outside of the highway or public right-of-way that is on private property.

“Secondary action” means an action involving infrastructure within the highway or public right-of-way.”

SECTION 2. Section 343-5, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) Whenever an applicant proposes an action specified by subsection (a) that requires approval of an agency and that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall require the applicant to prepare an environmental assessment of the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required; provided that, for an action that proposes the establishment of a renewable energy facility, a draft environmental impact statement shall be prepared at the earliest practicable time. The final approving agency for the request for approval is not required to be the accepting authority.

For environmental assessments for which a finding of no significant impact is anticipated:

- (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days;
- (2) The office shall inform the public of the availability of the draft environmental assessment for public review and comment pursuant to section 343-3; and
- (3) The applicant shall respond in writing to comments received during the review, and the agency shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of the agency's determination with the office, which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office.

The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comment pursuant to section 343-3.

The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement.

The authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval. The final decision-making body or approving agency for the request for approval is not required to be the accepting authority. The planning department for the county in which the proposed action will occur shall be a permissible accepting authority for the final statement.

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement pursuant to section 343-3.

The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination. In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision.

(d) Whenever an applicant requests approval for a proposed action and there is a question as to which of two or more state or county agencies with jurisdiction has the responsibility of ~~preparing the~~ determining whether an environmental assessment~~[-] is required~~, the office, after consultation with and assistance

ACT 313

from the affected state or county agencies, shall determine which agency ~~[shall prepare the assessment.]~~ has the responsibility for determining whether an environmental assessment by the applicant is required, except in situations involving secondary actions under section 343- ; provided that in no case shall the office be considered the approving agency.”

SECTION 3. Act 87, Session Laws of Hawaii 2009, is repealed.

SECTION 4. Act 45, Session Laws of Hawaii 2011, is repealed.

SECTION 5. Statutory material to be repealed is bracketed and new statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 313

S.B. NO. 2876

A Bill for an Act Relating to the Commercial Harbors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 266, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

“§266-A State harbors civil violations system; authorization. (a) There is established, within the department of transportation, a State harbors civil violations system, whose purpose shall be to process violations of departmental regulations for which administrative penalties have been authorized by law or rules adopted thereunder.

(b) The department of transportation shall adopt, amend, and repeal rules, subject to chapter 91, for the purposes of this section.

(c) Rules adopted pursuant to subsection (b) may include, but are not limited to, the following:

- (1) Requirements for notice of State harbors infraction;
- (2) A form of the answer that shall be made pursuant to a notice of State harbors infraction, which answer may be an admission of the infraction, a denial of the infraction, or an admission of the infraction with mitigating circumstances;
- (3) The action to be taken after an answer is received or when a person fails to answer the notice of State harbors infraction;
- (4) Procedures for administrative hearings under this section;
- (5) The imposition and enforcement of monetary assessments made pursuant to this section; and
- (6) Means of assuring that the alleged violator who answers the notice of State harbors infraction by an admission of the infraction or an admission of the infraction with mitigating circumstances has knowingly and voluntarily elected to use the State harbors civil violations system and waive the appeal provided for in section 91-14.

(d) Notwithstanding any other provision of law to the contrary, all State harbors infractions that the department of transportation identifies as subject to administrative penalties may be adjudicated pursuant to this section.

§266-B General administrative penalties. (a) Except as otherwise provided by law, the department of transportation may set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages resulting from a violation of this chapter or any rule adopted pursuant to this chapter. The administrative fines shall not exceed \$10,000 for each day of violation.

(b) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing civil legal action against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person. Each day of each violation shall constitute a separate offense."

SECTION 2. Section 266-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created in the treasury of the State the harbor special fund. All moneys received by the department of transportation from the rates ~~[and]~~, fees, fines, and administrative penalties pursuant to ~~[section]~~ sections 266-17(a) (1), 266-25, 266-28, and 266-B shall be paid into the harbor special fund. The harbor special fund and the second separate harbor special fund heretofore created shall be consolidated into the harbor special fund at such time as there are no longer any revenue bonds payable from the second separate harbor special fund. The harbor reserve fund heretofore created is abolished.

All moneys derived pursuant to this chapter from harbor properties of the statewide system of harbors ~~[(excluding properties principally used for recreation or the landing of fish, except properties located at Kewalo Basin, Ewa of Ala Moana Park, Honolulu)]~~ shall be paid into the harbor special fund and each fiscal year shall be appropriated, applied, or expended by the department of transportation for the statewide system of harbors for any purpose within the jurisdiction, powers, duties, and functions of the department of transportation related to the statewide system of harbors ~~[(excluding properties principally used for recreation or the landing of fish, except the properties located at Kewalo Basin, Ewa of Ala Moana Park, Honolulu)]~~, including, without limitation, the costs of operation, maintenance, and repair of the statewide system of harbors and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning, for the statewide system of harbors, all or any of which in the judgment of the department of transportation are necessary to the performance of its duties or functions."

SECTION 3. Section 266-25, Hawaii Revised Statutes, is amended to read as follows:

"§266-25 Violation of rules; penalty. (a) In addition to the reimbursement of fines and costs as provided in section 266-28, any person who violates any rule made, adopted, and published by the department of transportation as herein provided, or who violates any lawful command of any harbor master,

harbor agent, facility security officer, or harbor district manager, while in the discharge of the person's duty, or who violates this chapter, except as provided in subsections (b) and (c), shall be fined not more than \$1,000 or less than \$50 for each violation, and any vessel, the agents, owner, or crew of which violate the rules of the department or this part, shall be fined not more than \$1,000 or less than \$50 for each violation; provided that in addition to or as a condition to the suspension of the fines and penalties, a court, the department, or an administrative hearings officer may deprive the offender of the privilege of entering the secured area of the port or obtaining an operating or mooring permit for any vessel in state waters for a period of not more than one year; provided further that the offender, at the resumption of the privilege of operating or mooring a vessel in state waters, shall assume the last position on any waiting list.

(b) Any person who violates any rule adopted by the department of transportation under this part regulating vehicular parking or traffic movement shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein. A person found to have committed such a traffic infraction shall be fined not more than:

- (1) \$100 for a first violation;
- (2) \$200 for a second violation; and
- (3) \$500 for a third or subsequent violation.

(c) Any person who violates any rule adopted by the department of transportation relating to unauthorized discharge, dumping, or abandoning any petroleum product, hazardous material, or sewage in any state harbor facility or state waters in violation of the state water quality standards established by the department of health, shall be fined not more than \$10,000 for each [offense] day of violation, and any vessel, the agents, owner, or crew of which violate the rules of the department of transportation or this chapter, shall be fined not more than \$10,000 for each day of violation; provided that in addition to or as a condition to the suspension of the fines and penalties, the court, department, or administrative hearing officer may deprive the offender of the privilege of entering the secured area of the port or obtaining an operating or mooring permit for any vessel in state waters for a period of not more than [two years.] one year; provided further that the offender, at the resumption of the privilege of operating or mooring a vessel in state waters, shall assume the last position on any waiting list."

SECTION 4. Section 266-28, Hawaii Revised Statutes, is amended to read as follows:

"[§266-28] Fines arising from environmental protection and maritime transportation security violations. Notwithstanding any other law to the contrary, any commercial harbor tenant or user, including any shipper or shipping agent, who violates any federal, state, or county law or rule relating to environmental protection [and] or maritime transportation security pursuant to title 33 Code of Federal Regulations chapter 1 and thereby causes a fine to be levied by the United States Coast Guard upon the department, shall reimburse the department for the entire amount of the fine. The department may take such actions necessary to collect and deposit any amount reimbursable under this section~~;~~ into the harbor special fund, and may also demand reimbursement for costs or expenses incurred by the department resulting from enforcement of this section."

SECTION 5. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 314

H.B. NO. 2608

A Bill for an Act Relating to Driver Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§286- Driver’s license reciprocity committee. (a) The director shall establish a statewide driver’s license reciprocity committee consisting of one representative from the department of transportation and the chief examiner of drivers of each county, or their designees. The committee shall convene whenever a foreign country makes a request for driver’s license reciprocity.

(b) The statewide driver’s license reciprocity committee shall evaluate the written knowledge and practical examination program of the foreign country requesting driver’s license reciprocity.

(c) Members of the statewide driver’s license reciprocity committee shall serve voluntarily and without compensation, but shall be paid reasonable allowances for travel and expenses that may be incurred as a result of the performance of their duties on the committee. The costs shall be paid by the department of transportation.

(d) In the event that there is available from the requesting foreign country an evaluation of that country’s driver’s license requirements prepared by another United States driver licensing agency or the American Association of Motor Vehicle Administrators, the statewide driver’s license reciprocity committee shall conduct a comparison review of the evaluation and the State’s driver licensing examination standards and submit a written recommendation to the legislature no later than twenty days prior to the convening of the regular legislative session immediately subsequent to the review.

(e) If there is no such evaluation available from the requesting foreign country, the director may select from the statewide driver’s license reciprocity committee the representative from the department of transportation and a county examiner of drivers representative to travel to the requesting foreign country, at the expense of the requesting foreign country, to inspect and examine the foreign country’s driver’s license examination program and advise the committee of their findings. The committee shall review the findings and submit a written recommendation to the legislature on whether the foreign country’s driver’s license examination standards correspond to Hawaii’s driver’s license examination

standards no later than twenty days prior to the convening of the regular legislative session immediately subsequent to the travel and evaluation by the driver's license reciprocity committee.

(f) The director shall adopt rules pursuant to chapter 91 necessary for the purposes of this section."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2012.

(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 315

H.B. NO. 1957

A Bill for an Act Relating to Health Care Information.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the privacy of health information has been greatly enhanced by the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and related federal laws and regulations. HIPAA encourages the timely, secure, electronic transmission of individually identifiable health information, with important benefits for patients. The legislature also finds that HIPAA and related federal regulations provide a comprehensive regulatory scheme that protects the privacy of patients' health information while allowing reasonable access by health care providers, health plans, and health-oversight agencies.

The legislature further finds that the safety and protection of the health care consumer are paramount. The federal Health Information Technology for Economic and Clinical Health Act promotes the development of statewide health care information architecture that allows health care providers to share health care information, improve health care consumer safety, and reduce instances of redundant tests and procedures, leading to an overall reduction of health care costs while maintaining privacy and confidentiality in accordance with HIPAA.

Hawaii has over fifty different laws and rules, however, that govern health care privacy. This complex array of state laws and rules unduly burdens health care providers who attempt to share or access critical information at the point of care and imposes unnecessary administrative costs and daunting regulatory burdens without countervailing benefits.

The purpose of this Act is to ensure that covered entities and their business associates subject to HIPAA, who use or disclose health information in a manner permitted by and consistent with HIPAA's Privacy Rules (45 C.F.R. Part 164, subpart E) shall be deemed to be acting in compliance with state privacy laws and regulations, including section 334-5, Hawaii Revised Statutes, regarding the use and disclosure of mental health records; section 333E-6, Hawaii Revised Statutes, regarding the use and disclosure of developmental disabilities records; and section 325-101, Hawaii Revised Statutes, regarding the use and disclosure of records related to the human immunodeficiency virus, acquired immune deficiency syndrome (AIDS), and AIDS-related complex.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HEALTH CARE PRIVACY HARMONIZATION ACT**

§ -1 Applicability. This chapter shall apply, unless amended by specific reference to this chapter or any section thereof.

§ -2 Definitions. As used in this chapter:

“Breach” has the same meaning as in 45 Code of Federal Regulations section 164.402, as may be amended.

“Business associate” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

“Covered entity” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

“Disclosure” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

“Health information” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

“Individually identifiable health information” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

“Unsecured protected health information” has the same meaning as in 45 Code of Federal Regulations section 164.402, as may be amended.

“Use” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

§ -3 Privacy of individually identifiable health information. (a) Notwithstanding any law to the contrary, any use or disclosure of individually identifiable health information by any covered entity or business associate that is permitted by 45 Code of Federal Regulations Part 164, Subpart E, shall be deemed to comply with all state laws relating to the use, disclosure, or confidentiality of such information.

(b) Notwithstanding any law to the contrary, an authorization for release of individually identifiable health information that complies with 45 Code of Federal Regulations section 164.508 shall be deemed to comply with all state laws relating to individual authorization.

(c) Notwithstanding any law to the contrary, any notice of breach of unsecured protected health information that complies with 45 Code of Federal Regulations Part 164, Subpart D, shall be deemed to comply with all state laws relating to notice of breach of protected health information.

§ -4 Relationship to other laws. Nothing in this chapter shall be construed to:

- (1) Authorize the disclosure of individually identifiable health information to the extent that disclosure is restricted by federal law or regulations, including federal regulations about the confidentiality of information about drugs and alcohol, as set forth in 42 Code of Federal Regulations Part 2;
- (2) Compel the disclosure of individually identifiable health information that is not required by law to be disclosed;
- (3) Require a written authorization for release of individually identifiable health information or de-identified information to the extent that the Health Insurance Portability and Accountability Act of

- 1996, Public Law 104-191, and its related regulations, as may be amended, does not require such authorization;
- (4) Limit or otherwise affect any state law that:
 - (A) Requires persons or entities to report disease, injury, child abuse, elder abuse, domestic violence, birth, or death; or
 - (B) Governs public health surveillance, investigation, or intervention;
 - (5) Limit or otherwise affect health plan reporting, including reporting required for purposes of state management or financial audits; or
 - (6) Limit or otherwise affect any evidentiary privilege, limitation on discovery, or confidentiality protection provided by any state law, decision, or order in relation to individually identifiable health information sought, used, or produced in any judicial or administrative proceeding.”

SECTION 3. This Act shall take effect upon its approval.

(Approved July 10, 2012.)

ACT 316

H.B. NO. 1666

A Bill for an Act Relating to the Penal Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 707-700, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“Public highway” shall have the same meaning as in section 264-1.

“Street” shall have the same meaning as in section 291C-1.

“Vulnerable user” means:

- (1) A pedestrian legally within a street or public highway;
- (2) A roadway worker actually engaged in work upon a street or public highway or in work upon utility facilities along a street or public highway, or engaged in the provision of emergency services within a street or public highway, including but not limited to:
 - (A) Construction and maintenance workers; and
 - (B) Police, fire, and other emergency responders; or
- (3) A person legally operating any of the following within the street or public highway:
 - (A) A bicycle;
 - (B) A moped;
 - (C) An electric personal assistive mobility device; or
 - (D) A wheelchair conveyance or other personal mobility device.”

SECTION 2. Section 707-702.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person [is guilty of] commits the offense of negligent homicide in the first degree if that person causes the death of [another];

- (a) Another person by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol[-]; or
- (b) A vulnerable user by the operation of a vehicle in a negligent manner.”

SECTION 3. Section 707-703, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person ~~[is guilty of]~~ commits the offense of negligent homicide in the second degree if that person causes the death of ~~[another]~~:

- (a) Another person by the operation of a vehicle in a negligent manner[-]; or
- (b) A vulnerable user by the operation of a vehicle in a manner that constitutes simple negligence as defined in section 707-704(2).”

SECTION 4. Section 707-705, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person ~~[is guilty of]~~ commits the offense of negligent injury in the first degree if that person causes ~~[serious]~~:

- (a) Serious bodily injury to another person by the operation of a motor vehicle in a negligent manner[-]; or
- (b) Substantial bodily injury to a vulnerable user by the operation of a motor vehicle in a negligent manner.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 10, 2012.)

ACT 317

H.B. NO. 2626

A Bill for an Act Relating to Safe Routes to School.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§291- Safe routes to school program surcharge. (a) In addition to any other civil penalties ordered by the court, a person who violates any provision under this part shall be ordered to pay a safe routes to school program surcharge of \$10.

(b) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the director of finance who shall credit the surcharge to the safe routes to school program special fund established under section 291C-B.”

SECTION 2. Chapter 291C, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§291C-A State and county safe routes to school programs; coordinators; grants; reports. (a) There is established, within the department of transportation, a safe routes to school program that shall, among other things, enhance

traffic safety around Hawaii's schools, enable and encourage children to walk and bicycle to school, and make bicycling and walking to school a safer and more appealing transportation alternative.

(b) There is created, within the department of transportation, the position of safe routes to school program coordinator. The safe routes to school program coordinator shall provide a central point of contact for the federal safe routes to school program.

(c) A county designated office, through the county safe routes to school program coordinator, and in consultation with the department of education, department of health, and Hawaii Association of Independent Schools, shall provide safe routes to school funds for school-based and community-based workshops and infrastructure and non-infrastructure projects that will reduce vehicular traffic and congestion, encourage walking and bicycling, and promote health and safety around Hawaii's schools.

(d) The director of transportation, through the safe routes to school program coordinator and in consultation with county safe routes to school program coordinators, shall develop a mechanism to provide funds to county safe routes to school programs from the safe routes to school program special fund established under section 291C-B to be used for the implementation of county safe routes to school program projects.

(e) Implementation of the county safe routes to school program shall take into consideration the need to:

- (1) Fill a permanent, full-time position of safe routes to school coordinator within the county designated office;
- (2) Maximize the participation of school officials and stakeholder groups in the community;
- (3) Work in conjunction with county designated safe routes to school stakeholders and train volunteer facilitators for school-based workshops and community-based projects, including flexible training schedules;
- (4) Train potential grant requestors and stakeholder groups in federal and state requirements necessary for procurement, contracts, design, and construction; and
- (5) Allocate not less than ten per cent and not more than thirty per cent of safe routes to school funds for non-infrastructure-related activities or activities to encourage walking and bicycling to school, public awareness campaigns, student sessions on bicycle and pedestrian safety, or other non-infrastructure activities as prescribed under section 1404 of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law No. 109-59.

(f) Each grant proposal in the county safe routes to school program shall:

- (1) Identify the modes of travel used by students to get to school;
- (2) Determine the number of students using each mode of travel;
- (3) Survey the parents of each student to gather information regarding the factors involved in the choice of transportation mode for the student and, where the student travels by automobile or bus, conditions that would need to change for the parent to permit the student to walk or ride a bicycle to school, and obstacles to walking and biking; and
- (4) Identify traffic infrastructure elements in the immediate vicinity of each school, including multi-lane roadways, speed limits, and traffic

calming features that, either by their presence or absence, contribute to the use of automobiles as a student's mode of travel to school.

(g) The director of transportation, in consultation with organizations that have received non-infrastructure and pending infrastructure grants, shall develop a streamlined process for the safe routes to school program that meets federal and state requirements, simplifies the application process, and expedites release of funding after completion of school-based and community-based projects for infrastructure and non-infrastructure.

(h) The director of transportation shall submit to the legislature an annual report of the status and progress of the safe routes to school program, including an accounting of all grants provided through the program and a timeline for future grant awards, no later than twenty days prior to the convening of each regular session.

(i) Nothing in this section shall be construed as requiring actions or omissions that would render the State ineligible to receive funds for the safe routes to school program under the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law No. 109-59.

§291C-B Safe routes to school program special fund; establishment. (a)

There is established in the state treasury the safe routes to school program special fund, into which shall be deposited:

- (1) Assessments collected for speeding in a school zone, pursuant to section 291C-104; and
- (2) Safe routes to school program surcharges collected in accordance with sections 291- and 291C-C.

Moneys in the fund shall be distributed by the director of transportation to the respective counties to expend.

(b) The director of transportation shall adopt rules pursuant to chapter 91 to implement this section. The rules shall establish a formula by which the moneys in the fund shall be distributed to each county and provide how the county shall expend the moneys for the purposes under 291C-A in public school zones.

§291C-C Safe routes to school program surcharge. (a)

In addition to any other civil penalties ordered by the court, a person who violates any provision under part X shall be ordered to pay a safe routes to school program surcharge of \$10 if the violator is not already required to pay a safe routes to school program surcharge for the violation.

(b) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the director of finance who shall transmit the surcharge to the safe routes to school program special fund established under section 291C-B."

SECTION 3. Section 291C-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any person who violates this section shall be fined \$250 ~~and~~, may be charged with a surcharge of up to \$100 to be deposited into the trauma system special fund~~[-]~~, and, where the violation involves speeding in a school zone, shall be charged with a surcharge of \$25 to be deposited into the safe routes to school program special fund."

SECTION 4. There is appropriated out of the safe routes to school program special fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2012-2013 for the safe routes to school program.

ACT 318

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on September 1, 2012.

(Approved July 10, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 318

H.B. NO. 2030

A Bill for an Act Relating to the Statewide Traffic Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that traffic accident fatalities involving police officers responding to emergency situations are tragic and largely avoidable with certain traffic safety precautions. On September 13, 2011, a police officer was killed along Farrington highway while assisting another officer during a traffic stop which also resulted in severe injuries to the officer being assisted. On January 21, 2012, another police officer was killed while the officer's vehicle was stopped behind a stalled vehicle to render assistance on the H-1 freeway.

The legislature finds that existing law does not address the specific situation of approaching a police vehicle, or of any other emergency vehicle, that is stopped to render assistance to a motorist or another emergency responder.

The purpose of this Act is to require a driver to take certain safety precautions when approaching an emergency vehicle that is stopped ahead of the driver.

SECTION 2. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§291C- Emergency vehicle stopped for emergencies; duty of approaching vehicle. (a) A driver of a vehicle that is approaching an emergency vehicle that is stopped for an emergency, investigation of a possible traffic violation, rendering assistance to a police officer, or other official duties, as indicated by the flashing emergency lights of the stopped emergency vehicle, shall:

- (1) Slow down to a reasonable and prudent speed that is safe under the circumstances of an emergency road situation ahead. Reasonableness and prudence shall take into account weather conditions, road conditions, and vehicular and pedestrian traffic in the immediate

area. If necessary, the driver shall come to a complete stop before making a lane change under paragraph (2); and

- (2) Make a lane change into the adjacent lane if necessary and if it is safe to do so, or if possible, to two lanes over which leaves one lane between the driver and the emergency vehicle.

(b) As used in this section, “emergency vehicle” means a police or fire department vehicle, ocean safety vehicle, emergency medical services vehicle, freeway service patrol vehicle, or a tow truck.

(c) Violation of subsection (a) shall not be subject to section 287-20, relating to furnishing proof of financial responsibility.

A violation of subsection (a) shall constitute a violation if no death or injury results from the violation.

If a death or injury occurs and is attributable to the driver of the vehicle for a violation of subsection (a), then the driver shall instead be charged under section 707-702.5 for negligent homicide in the first degree; section 707-703 for negligent homicide in the second degree; section 707-704, for negligent homicide in the third degree; section 707-705 for negligent injury in the first degree; or section 707-706 for negligent injury in the second degree, as applicable.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved July 10, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 319

H.B. NO. 2113

A Bill for an Act Relating to Fire Protection.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to impose a total ban on aerial luminaries, also known as sky lanterns. The legislature finds that aerial luminaries pose a potential hazard to our community. These devices are paper lanterns containing a small candle or other fuel that heats air inside the lantern causing the lantern to rise for several hundred feet and remain airborne until the candle extinguishes, at which time the lantern descends. This uncontrolled open flame device can land on combustible vegetation, buildings, or power lines, and interfere with aircraft flight patterns. Death or serious injury to livestock has been reported in many countries when the sky lantern remains are consumed.

SECTION 2. Chapter 132D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§132D- Aerial luminaries; prohibited. (a) It shall be unlawful to sell, offer for sale, distribute, possess, ignite, or otherwise use aerial luminaries, commonly known as sky lanterns, Hawaii lanterns, and flying luminaries.

(b) Any person who violates this section shall be guilty of a misdemeanor and shall be imprisoned for not more than one year or fined not more than \$1,000, or both, for each violation.

(c) As used in this section, "aerial luminary" means an airborne paper lantern containing a small candle, or other device for fuel, that heats air from inside the lantern causing the lantern to rise into the air and remain airborne until the candle or other device extinguishes."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved July 10, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 320

H.B. NO. 2684

A Bill for an Act Relating to the Zipper Lane.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Hawaii's highways are necessary to accommodate the transportation needs of the people of the State. Increased time spent on the road in travel decreases work efficiency, time spent with family or at work, and quality of life. As the population grows, especially on the west side of Oahu, the need for travel lanes will increase.

High occupancy vehicle lanes, such as zipper lanes, reduce the number of cars on the road by providing an incentive to carpool. However, the zipper lane could be more effective if it extended westward from Waipahu toward Kapolei, west of the Kunia on-ramp.

The purpose of this Act is to require the department of transportation to conduct a study on the feasibility of extending the zipper lane westward from Waipahu toward Kapolei, west of the Kunia on-ramp.

SECTION 2. (a) The department of transportation shall conduct a study on the feasibility of extending the zipper lane westward from Waipahu toward Kapolei, west of the Kunia on-ramp on the island of Oahu. The feasibility study shall include but not be limited to the following:

- (1) A review of existing traffic conditions and how traffic conditions can be improved by extending the zipper lane westward;
- (2) The number and locations of additional entrances to the zipper lane;
- (3) A cost-benefit analysis of extending the zipper lane westward;

- (4) An identification and evaluation of desired, intended, and unintended effects of extending the zipper lane westward;
- (5) A timetable for the construction of this extension; and
- (6) Any other issues deemed necessary or relevant by the director of transportation.

(b) The department of transportation shall submit a written report of its findings and recommendations, including any necessary proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2014.

SECTION 3. There is appropriated out of the state highway fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2012-2013 for a study on the feasibility of extending the zipper lane westward from Waipahu toward Kapolei, west of the Kunia on-ramp.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved July 10, 2012.)

ACT 321

S.B. NO. 2655

A Bill for an Act Relating to Portable Electronics Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

“ARTICLE PORTABLE ELECTRONICS INSURANCE

§431: -101 Definitions. For purposes of this article:

“Customer” means a person who purchases portable electronics or services.

“Enrolled customer” means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

“Location” means any physical location in the State or any website, call-center site, or similar location directed to residents of the State.

“Portable electronics” means electronic devices that are portable in nature, and the accessories and services related to the use of the device.

“Portable electronics insurance” means insurance providing coverage for the repair or replacement of portable electronics, which may provide coverage for portable electronics against any one or more of the following: loss, theft, inoperability due to mechanical failure, malfunction, damage, or other similar causes. The term does not include:

- (1) A service contract, as defined by section 481X-2;
- (2) A policy of insurance covering a seller’s or manufacturer’s obligations under a warranty; or
- (3) A homeowner’s, renter’s, private passenger automobile, commercial multi-peril, or similar insurance policy.

“Portable electronics transaction” means:

- (1) The sale or lease of portable electronics by a vendor to a customer;
or
- (2) The sale of a service related to the use of portable electronics by a vendor to a customer.

“Supervising entity” means a business entity that is a licensed insurer or insurance producer that is appointed or authorized by an insurer to supervise the administration of a portable electronics insurance program.

“Vendor” means a person in the business of directly or indirectly engaging in portable electronics transactions.

§431: -102 Licensure of vendors. (a) A vendor shall hold a limited lines license to sell or offer coverage under a policy of portable electronics insurance.

(b) A limited lines license issued under this section shall authorize any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(c) The supervising entity shall maintain a registry of vendor locations that are authorized to sell or solicit portable electronics insurance coverage in the State. Upon request by the commissioner and with ten days’ notice to the supervising entity, the registry shall be open to inspection and examination by the commissioner during regular business hours of the supervising entity.

(d) Notwithstanding any law to the contrary, a license issued pursuant to this section shall authorize the licensee and its employees or authorized representatives to engage in the activities that are permitted in this section.

§431: -103 Requirements for sale of portable electronics insurance. (a) At every location at which portable electronics insurance is offered to customers, brochures or other written materials shall be made available to prospective customers. The brochures or other written materials shall:

- (1) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer’s homeowner’s insurance policy, renter’s insurance policy, or other source of coverage;
- (2) State that enrollment by the customer in a portable electronics insurance program is not required to purchase or lease portable electronics or services;
- (3) Summarize the material terms of the insurance coverage, including:
 - (A) The identity of the insurer;
 - (B) The identity of the supervising entity;
 - (C) The amount of any applicable deductible and how it is to be paid;
 - (D) The benefits of the coverage; and
 - (E) The key terms and conditions of coverage, such as whether portable electronics may be repaired or replaced with a similar make and model reconditioned, or with non-original manufacturer parts or equipment;
- (4) Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable if the customer fails to comply with any equipment-return requirements; and
- (5) State that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the

person paying the premium shall receive a refund of any applicable unearned premium.

(b) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor for its enrolled customers.

(c) Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.

§431: -104 Authority of vendors. (a) The employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this chapter, provided that:

- (1) The vendor obtains a limited lines license to authorize its employees or authorized representatives to sell or offer portable electronics insurance pursuant to this section;
- (2) The insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of a portable electronics insurance program, including development of a training program for employees and authorized representatives of the vendors. The training shall comply with the following:
 - (A) The training shall be delivered to employees and authorized representatives of a vendor who are directly engaged in the activity of selling or offering portable electronics insurance;
 - (B) The training may be provided in electronic form; provided that, if the training is conducted in an electronic form, the supervising entity shall implement a supplemental education program regarding the portable electronics insurance product that is conducted and overseen by a licensed employee of the supervising entity; and
 - (C) Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under section 431: -103; and
- (3) No employee or authorized representative of a vendor shall advertise, represent, or otherwise portray the employee or representative as a non-limited lines licensed insurance producer.

(b) The charges for portable electronics insurance coverage may be billed and collected by the vendor. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services. Vendors billing and collecting the charges shall not be required to maintain the funds in a segregated account; provided that the vendor is authorized by the insurer to hold the funds in an alternative manner and remits the amounts to the supervising entity within sixty days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection services.

§431: -105 Sanctions for violations. The vendor or its employee or authorized representative shall be subject to sanctions pursuant to this chapter for the violation of any provision of this chapter.

§431: -106 Termination or modification of portable electronics insurance.

(a) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance. The vendor and enrolled customers shall be provided at least sixty days' notice before the change becomes effective.

(b) If the insurer changes the terms and conditions of a policy of portable electronics insurance, the insurer shall provide the vendor with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating that a change in the terms and conditions has occurred, and a summary of material changes.

(c) Notwithstanding subsection (a), an insurer may terminate an enrolled customer's enrollment under a policy of portable electronics insurance upon fifteen days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder.

(d) Notwithstanding subsection (a), an insurer may immediately terminate an enrolled customer's enrollment under a policy of portable electronics insurance:

- (1) For nonpayment of an insurance policy premium;
- (2) If the enrolled customer ceases to have an active service with the vendor; or
- (3) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the policy of portable electronics insurance and the insurer sends notice of termination to the enrolled customer within thirty calendar days after exhaustion of the limit; provided that, if notice is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability, until the insurer sends notice of termination to the enrolled customer.

(e) If a policy of portable electronics insurance is terminated by a vendor, the vendor shall mail or deliver written notice to the enrolled customer informing the enrolled customer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered to the enrolled customer at least thirty days prior to the termination.

(f) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to this section, or is otherwise required by law, the notice or correspondence shall be in writing and sent within the notice period, if any, specified within the law requiring the notice or correspondence. Notwithstanding any law to the contrary, notice and correspondence may be sent either by mail or by electronic means as set forth in this subsection. If the notice or correspondence is mailed, it shall be sent to the vendor at the vendor's mailing address specified for such purpose and to its affected enrolled customers' last known mailing addresses on file with the insurer. The insurer or vendor, as applicable, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service. If the notice or correspondence is sent by electronic means, it shall be sent to the vendor at the vendor's electronic-mail address specified for such purpose and to its affected enrolled customers' last known electronic-mail addresses as provided by each enrolled customer to the insurer or vendor, as applicable.

For purposes of this subsection, an enrolled customer's provision of an electronic-mail address to the insurer or vendor, as applicable, shall be deemed consent to receive notices and correspondence by electronic means. The insurer or vendor, as applicable, shall maintain proof that the notice or correspondence was sent.

(g) Notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor, as applicable, by the supervising entity appointed by the insurer.

§431: -107 Application for license and fees. (a) A sworn application for a license under this article shall be filed with the commissioner on forms prescribed and furnished by the commissioner.

(b) The application for a license shall provide the:

(1) Name, residence address, electronic-mail address, and other information required by the commissioner for an employee or officer of the vendor that is designated by the applicant as the person responsible for the vendor's compliance with the requirements of this article; provided that, if the vendor derives more than fifty per cent of its revenue from the sale of portable electronics insurance, the information in this paragraph shall be provided for all officers, directors, and shareholders of record having beneficial ownership of ten per cent or more of any class of securities registered under the federal securities law; and

(2) Location of the applicant's home office.

(c) Any vendor engaging in portable electronics insurance transactions on or before the effective date of Act , Session Laws of Hawaii 2012, shall apply for licensure within ninety days of the application's being made available by the commissioner. Any applicant commencing operations after the effective date of Act , Session Laws of Hawaii 2012, shall obtain a license prior to offering portable electronics insurance.

(d) Initial licenses issued pursuant to this article shall be valid for a period of not less than twenty-four months. Renewed licenses shall be valid for a period of twenty-four months.

(e) Each vendor licensed under this article shall pay to the commissioner a fee of \$150 for the issuance of the initial portable electronics limited lines license, plus a license fee of \$150 per year for the initial or renewal term. A pro rata portion of the license fee may be applied for a partial year of the initial term.

§431: -108 Portable electronics insurance claims. No licensed independent adjuster or licensed vendor shall supervise more than twenty-five employees; provided that a licensed vendor who supervises employees or adjusts claims shall not be required to be licensed as an adjuster.

For purposes of this section:

"Automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation, and final resolution of portable electronics insurance claims, which:

(1) Shall be used only by a licensed independent adjuster, a licensed vendor, or supervised employees; and

(2) Shall comply with all claims-payment requirements of the insurance code.

"Employee" means an individual who collects claim information for portable electronics insurance claims from, or furnishes claim information to, insureds or claimants, and who conducts data entry, including entering data into an automated claims adjudication system."

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. The revisor of statutes shall insert the effective date of this Act in the appropriate places in section 1 of this Act.

SECTION 4. This Act shall take effect on January 1, 2013.

(Approved July 10, 2012.)

ACT 322

H.B. NO. 246

A Bill for an Act Relating to Appropriations to the Department of the Prosecuting Attorney of the City and County of Honolulu.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$734,973 or so much thereof as may be necessary for fiscal year 2012-2013 for a grant-in-aid to the department of the prosecuting attorney of the city and county of Honolulu for the career criminal prosecution unit, including the hiring of necessary staff.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$121,057 or so much thereof as may be necessary for fiscal year 2012-2013 for a grant-in-aid to the department of the prosecuting attorney of the city and county of Honolulu for prosecution in drug court, including the hiring of necessary staff.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$86,888 or so much thereof as may be necessary for fiscal year 2012-2013 for a grant-in-aid to the department of the prosecuting attorney of the city and county of Honolulu for the Hawaii's opportunity probation with enforcement program, including the hiring of necessary staff.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$502,965 or so much thereof as may be necessary for fiscal year 2012-2013 for a grant-in-aid to the department of the prosecuting attorney of the city and county of Honolulu for the victim witness assistance program, including the hiring of necessary staff.

SECTION 5. The sums appropriated in sections 1, 2, 3, and 4 shall be expended by the department of the prosecuting attorney of the city and county of Honolulu for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 2012.

(Approved July 10, 2012.)

ACT 323

S.B. NO. 2742

A Bill for an Act Relating to the Hawaii Community Development Authority.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that quorum of the Hawaii community development authority is difficult to achieve. Due to the size and restrictions

of the membership, often times decisions are unable to be made in a timely manner. In order to allow for the benefit of representation of all stakeholders, the composition of the membership of the authority should be amended.

The purpose of this part is to change the composition of the Hawaii community development authority board to nine voting members for each community development district and allow for certain members to designate a voting representative if they are unable to attend a meeting.

SECTION 2. Section 206E-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The authority shall consist of ~~[thirteen]~~ nine voting members~~[-]~~ for each community development district established in this chapter. The director of finance, the director of business, economic development, and tourism, the comptroller, and the director of transportation, or their respective designated representatives, shall serve as ex officio, voting members~~[-]~~. ~~One member shall be appointed by the governor from a list of not less than three prospective appointees submitted by the president of the senate, and one member shall be appointed by the governor from a list of not less than three prospective appointees submitted by the speaker of the house of representatives. Seven members shall be appointed by the governor for staggered terms pursuant to section 26-34; provided that four members shall be appointed at large and, initially, three]~~ of the authority; provided that, in addition:

- (1) A cultural expert shall be appointed by the governor pursuant to section 26-34 as a voting member;
- (2) One member shall be appointed by the governor pursuant to section 26-34 as a voting member; provided further that this paragraph shall not apply to the Kalaeloa community development district; and
- (3) The chairperson of the Hawaiian homes commission or the chairperson's designee, shall serve as an ex officio, voting member for the Kalaeloa community development district only, shall be considered in determining quorum and majority only on issues relating to the Kalaeloa community development district, and shall vote only on issues relating to the Kalaeloa community development district.

Three additional members, hereinafter referred to as county members, shall be selected by the governor from a list of ten prospective appointees recommended by the local governing body of the county in which [the initial] each designated district is situated; [and] provided [further] that when vacancies occur in any of the three positions for which the members were selected from a list of county recommendations, the governor shall fill such vacancies on the basis of one from a list of four recommendations, two from a list of seven recommendations, or three from a list of ten recommendations. The list of recommendations shall be made by the local governing body of the county. Of the [nine] three members appointed [either by the governor from the lists provided by the president of the senate and speaker of the house, at large by the governor, as a cultural expert or] as county members recommended by the local governing body of the county in which [the initial] each designated district is situated, [at least] two members shall represent small businesses and shall be designated as the small business representatives on the board whose purpose, among other things, is to vote on matters before the board that affect small businesses. The small business representatives shall be owners or active managers of a small business with its principal place of operation located within the physical boundaries of [the initial] each designated district. Notwithstanding section 84-14(a), the small business representatives [shall not be prohibited from voting] may vote on any matter concerning any district under the board's jurisdiction[;] other than

matters concerning the Heeia community development district; provided that the matter is not limited to solely benefiting the specific interest of that member and the matter concerns broader interests within the district. One of the county members shall be a resident of the designated district; provided that for purposes of this section, the county member who is a resident of the Kalaeloa community development district shall be a resident of the Ewa zone (zone 9, sections 1 through 2), or the Waianae zone (zone 8, sections 1 through 9) of the first tax map key division. The county members shall be considered in determining quorum and majority only on issues not relating to the Heeia community development district and may only vote on issues not related to the Heeia community development district.

Three additional voting members shall be appointed to the authority by the governor pursuant to section 26-34 to represent the Heeia community development district. These three members shall be considered in determining quorum and majority only on issues relating to the Heeia community development district and may vote only on issues related to the Heeia community development district. The three members shall be residents of the Heeia community development district or the Koolauapoko district which consists of sections 1 through 9 of zone 4 of the first tax map key division.

If an additional district is designated by the legislature, [the total membership of the authority shall be increased] the governor shall appoint three county members as prescribed above [by the appointment of three additional members, except as provided for in section 206E-191.] for each additional designated district.

Notwithstanding section 92-15, a majority of all members shall constitute a quorum to do business, and the concurrence of a majority of all members shall be necessary to make any action of the authority valid; except [that, on any matter relating solely to a specific community development district, the members representing districts other than that specific community development district shall neither vote, nor shall they be counted to constitute a quorum, and concurrence shall be required of a majority of that portion of the authority made up of all ex officio voting members, members at large, and county and district members representing the district for which action is being proposed for such action to be valid.] as provided in this subsection. All members shall continue in office until their respective successors have been appointed and qualified. Except as herein provided, no member appointed under this subsection shall be an officer or employee of the State or its political subdivisions.

For [purposes] of this section, "small business" means a business which is independently owned and which is not dominant in its field of operation."

SECTION 3. Section 206E-191, Hawaii Revised Statutes, is amended to read as follows:

"[§206E-191] Barbers Point Naval Air Station redevelopment; power to redevelop established. (a) The Hawaii community development authority shall be the designated agency of the State to implement this part.

(b) The authority shall act as the local redevelopment authority to facilitate the redevelopment of Barbers Point Naval Air Station in accordance with the Barbers Point Naval Air Station community reuse plan. In addition to any other duties that the authority may have pursuant to this chapter, the authority's duties shall include but not be limited to:

- (1) Coordinating with the Navy and other entities during the conveyance of properties and conducting remediation activities for the Barbers Point Naval Air Station community reuse plan;

- (2) Assisting landholders designated by the plan to market their properties and process conveyance requests;
- (3) Working with the Navy and others to ensure that infrastructure support is provided to the existing developed area, referred to as the “downtown area”, and other federally retained areas;
- (4) Developing the infrastructure necessary to support the implementation of the Barbers Point Naval Air Station community reuse plan; and
- (5) Providing, to the extent feasible, maximum opportunity for the reuse of surplus property by private enterprise or state and county government.

~~[(e) Five additional voting members shall, except as otherwise provided in this subsection, be appointed to the authority by the governor to represent the Kalaeloa community development district. These members shall be considered in determining quorum and majority only on issues relating to the Kalaeloa community development district, and may vote only on issues relating to the Kalaeloa community development district. These members shall consist of:~~

- ~~(1) The chairperson of the Hawaiian homes commission;~~
- ~~(2) The director of the city and county of Honolulu department of planning and permitting;~~
- ~~(3) Two members representing the surrounding community for a term pursuant to section 26-34, one of which shall be selected by the mayor of the city and county of Honolulu; and~~
- ~~(4) One member who is a Hawaiian cultural specialist;.]”~~

SECTION 4. Section 206E-202, Hawaii Revised Statutes, is amended to read as follows:

“[H§206E-202]] District established; boundaries. (a) The Heeia community development district is hereby established. The district shall include that area within the boundaries described as follows: the southern boundary begins at the southern property line of tax map key number (1) 4-6-16:001 and runs west to Kahekili highway and east to Kamehameha highway. The northern boundary begins at the northern property line of tax map key number (1) 4-6-16:001 and runs west to Kahekili highway and east to Kamehameha highway. The tax map key numbers are (1) 4-6-16:001 and (1) 4-6-16:002 (owned by the authority), and (1) 4-6-16:004, :011, :012, and :017 (owned by various owners of kuleana parcels).

(b) The authority shall serve as the local redevelopment authority of the district to facilitate culturally appropriate agriculture, education, and natural-resource restoration and management of the Heeia wetlands, in alignment with the Honolulu board of water supply’s most current “Koolau Poko Watershed Management Plan” and the city and county of Honolulu’s most current “Koolaupoko Sustainable Communities Plan”. In addition to any other of its duties under this chapter, the authority shall:

- (1) Consult with the following persons and entities:
 - (A) Recorded landowners in the district;
 - (B) Recorded landowners in section 6 of zone 4 of the first tax map key division;
 - (C) Koolaupoko Hawaiian Civic Club;
 - (D) Kailua neighborhood board;
 - (E) Kahaluu neighborhood board; and
 - (F) Kaneohe neighborhood board,

to implement activities related to and supportive of cultural practices, agriculture, education, and natural-resource restoration and management;

- (2) Assist land users to manage their properties and implement activities related to and supportive of cultural practices, agriculture, education, and natural-resource restoration and management;
- (3) Work with federal, state, county, and other agencies to ensure that infrastructural support is provided for the district;
- (4) Develop the infrastructure necessary to support the implementation of the Heeia community development district master plan; and
- (5) Provide, to the extent feasible, maximum opportunity for the restoration and implementation of sustainable, culturally appropriate, biologically responsible, or agriculturally beneficial enterprises.

~~[(e) Three additional voting members shall, except as otherwise provided in this subsection, be appointed to the authority by the governor pursuant to section 26-34 to represent the district. These three members shall be considered in determining quorum and majority only on issues relating to the district and may vote only on issues related to the district. The three members shall be residents of the district or the Koolaupeko district which consists of sections 1 through 9 of zone 4 of the first tax map key division.]~~

SECTION 5. To ensure that the authority for each community development district established under chapter 206E, Hawaii Revised Statutes, will have the requisite number of members to achieve quorum to convene a meeting and conduct business, the three county members serving on the Hawaii community development authority on the day before the effective date of this Act shall serve as the initial county members for each designated district notwithstanding any failure to qualify as a small business representative or resident of the district, as applicable, and shall continue to serve as members for each designated district until their respective terms expire or their respective successors are appointed, whichever occurs sooner.

PART II

SECTION 6. Pursuant to chapter 206E, Hawaii Revised Statutes, the Hawaii community development authority is tasked with the redevelopment responsibilities for legislatively created community development districts. The legislature has designated three community development districts: Kakaako, Kalaehoa, and Heeia.

Currently, section 206E-14, Hawaii Revised Statutes, allows the authority to sell or lease for a term not exceeding sixty-five years, all or any portion of its real or personal property constituting a redevelopment project if the authority finds that the sale or lease is in conformity with the community development plan. As defined in section 206E-2, Hawaii Revised Statutes, a redevelopment project may only be incidental in its commercial nature. The legislature finds that this limitation adversely impacts the authority's ability to attract long-term investors and tenants who seek to develop or redevelop primarily commercial projects within the Kakaako community development district. This conflicts with the authority's commitment to implement longer lasting change in the Kakaako community development district.

In addition, although section 206E-14, Hawaii Revised Statutes, provides that a sale may be made without recourse to public auction, the section is silent as to whether a lease may be made without recourse to public notice for sealed bids.

The purpose of this part is to provide greater flexibility to the authority in implementing its master plan for the Kakaako community development district by allowing the authority to lease:

- (1) For a term not exceeding sixty-five years, property constituting a project (as opposed to selling the project, or leasing or selling a re-development project); and
- (2) A project without recourse to public notice for sealed bids; in the Kakaako community development district.

The legislature further finds, that safeguards remain in place because all long-term leases require prior approval by the authority at a publicly noticed meeting and after opportunity for public comment.

SECTION 7. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§206E- Lease of projects. (a) Notwithstanding any law to the contrary, including 206E-14, except as prohibited by section 206E-31.5, the authority may, without recourse to public auction or public notice for sealed bids, lease for a term not exceeding sixty-five years all or any portion of the real or personal property constituting a project to any person, upon such terms and conditions as may be approved by the authority, if the authority finds that the lease is in conformity with the community development plan.

(b) In the case of any sale of the leasehold interest in the project, the terms of the sale shall provide for the repurchase of the leasehold property by the authority at its option, in the event that the purchaser, if other than a state agency, desires to sell the property within ten years; provided that this requirement may be waived by the authority if the authority determines that a waiver will not be contrary to the community development plan. The authority shall establish at the time of original sale a formula setting forth a basis for a repurchase price based on market considerations including but not limited to interest rates, land values, construction costs, and federal tax laws.

If the purchaser in a residential project is a state agency, the authority may include as a term of the sale a provision for the repurchase of the property in conformance with this section.”

PART III

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 9. This Act shall take effect upon its approval.

(Approved July 10, 2012.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Public Accountancy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 466, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . PEER REVIEW PROCESS

§466-A Definitions. As used in this part, unless the context clearly indicates otherwise:

“Rating” means the type of report issued following a peer review. Rating shall be “pass”, “pass with deficiency”, or “fail”.

“Sponsoring organization” means a third-party entity that meets the standards specified by this part for administering a peer review.

§466-B Establishment of peer review process; confidentiality. (a) There is established a peer review process to review the attest work of firms. The peer review process shall be for educational or remedial and not punitive purposes.

(b) The peer review process shall keep confidential the identity of any person or firm for whom attest work has been performed by the firm under review.

(c) Neither the proceedings nor the records of any peer review process shall be subject to discovery. No person involved in the peer review process shall be required to testify on that process; provided that statements made by any person in connection with the peer review process who is a party to an action or proceeding, the subject matter of which was reviewed in that process, shall be subject to discovery.

(d) This part shall not be construed to require any firm to become a member of any sponsoring organization.

§466-C Standards for peer reviews and sponsoring organizations. (a) Except as otherwise provided by section 466-F, the board shall adopt the Standards for Performing and Reporting on Peer Reviews and any applicable ethical requirements adopted by the American Institute of Certified Public Accountants and the public company accounting oversight board firm inspection standards for public company audit firms required under the Sarbanes-Oxley Act of 2002, as amended, as its minimum standards for peer reviews.

(b) Subject to sections 466-J and 466-K, qualified sponsoring organizations shall be the American Institute of Certified Public Accountants peer review program, the Hawaii Society of Certified Public Accountants peer review program, state certified public accountant societies fully involved in the administration of the American Institute of Certified Public Accountants peer review program, the public company accounting oversight board, the board, and other entities that are approved by the board.

§466-D Enrollment and participation. (a) Every firm, including the Hawaii offices and Hawaii engagements of foreign or multistate firms, that is required to obtain a firm permit to practice pursuant to section 466-7 shall undergo a peer review every three years. The firm’s Hawaii offices, if any, and Hawaii attest engagements shall be included in the scope of the peer review performed

in accordance with the American Institute of Certified Public Accountants Standards for Performing and Reporting on Peer Reviews.

(b) All firms subject to this part and performing Hawaii attest work as of December 31, 2014, shall enroll in the applicable program of an approved sponsoring organization by December 31, 2015, notify the board of enrollment in that program, and have a peer review performed by December 31, 2017.

(c) Any firm that begins performing Hawaii attest work after December 31, 2014, shall:

- (1) Notify the board within thirty days of the beginning of the performance of attest work;
- (2) Enroll in the applicable programs of an approved sponsoring organization within one year from its initial licensing date or the performance of Hawaii attest work that requires a peer review;
- (3) Provide the board with enrollment information within one year of the date the Hawaii attest work was first performed;
- (4) Have a peer review performed within eighteen months of the date the Hawaii attest work was first performed;
- (5) Adopt the peer review due date assigned by the sponsoring organization and notify the board of the peer review due date within thirty days of its assignment; and
- (6) Schedule and begin an additional review within three years of the previous review's due date, or earlier if required by the sponsoring organization or the board; provided that the firm shall be responsible for anticipating its needs for peer review services in sufficient time to enable the reviewer to complete the review by the assigned review due date.

(d) A firm that does not perform Hawaii attest work shall be exempt from the peer review process.

(e) If a firm is merged, combined, dissolved, or separated, the sponsoring organization shall determine which resultant firm shall be considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(f) The board shall accept extensions granted by the sponsoring organization to complete a peer review; provided that the board is notified by the firm within twenty days of the date that an extension is granted. The board may also grant a firm an extension of time to comply with the peer review requirement of this part based on a showing of hardship, including reasons of health, military service, or other good cause as determined by the board.

(g) A firm that has been rejected by a sponsoring organization for any reason shall make a request in writing to the board for authorization to enroll in a program of another sponsoring organization.

(h) A firm that chooses to enroll in a program of another sponsoring organization pursuant to subsection (g) may do so; provided that the firm authorizes the previous sponsoring organization to communicate to the succeeding sponsoring organization any outstanding corrective actions related to the firm's most recent peer review. Any outstanding corrective actions shall be cleared and outstanding fees paid prior to the transfer between sponsoring organizations.

(i) An out-of-state firm performing Hawaii attest work shall comply with this part.

(j) If a firm is subject to inspections pursuant to the Sarbanes-Oxley Act of 2002, as amended, and also performs Hawaii attest work not subject to those inspections, the firm shall enroll in a peer review program for review of its non-public company Hawaii attest work in addition to the firm inspection program required by the public company accounting oversight board.

§466-E Peer review compliance reporting form. (a) Upon the completion of a peer review, each reviewed firm shall submit a peer review compliance reporting form to the board pursuant to section 466-H. The peer review compliance reporting form shall include the following:

- (1) The name of the firm conducting the peer review;
- (2) The name of the approved sponsoring organization;
- (3) Except for public company accounting oversight board inspections, the name of the team captain or peer reviewer or reviewers, who shall not be affiliated with the firm being reviewed;
- (4) The rating issued to the firm as a result of the review, which shall be clearly indicated in the review report;
- (5) The date of completion of the peer review; and
- (6) A representation that the peer review or the inspection by the public company accounting oversight board firm inspection program includes the firm's Hawaii attest engagements within the scope of the review or the inspection.

(b) A firm shall include, with the peer review compliance reporting form, the contemporaneous Hawaii supplement to the peer review report pursuant to section 466-F, if:

- (1) A peer review report from an approved sponsoring organization does not include the selection of a Hawaii office or Hawaii attest engagement;
- (2) The peer reviewer does not hold permits to practice public accountancy under section 466-7, and is required to have permits to practice under section 466-7, except inspectors for the public company accounting oversight board; or
- (3) The final report resulting from any inspection by the public company accounting oversight board firm inspection program does not include the firm's Hawaii offices, if any, and Hawaii attest engagements in the scope of the inspection, and the firm is not required to enroll in another peer review program under section 466-D.

§466-F Hawaii supplement to the peer review report. (a) A firm required to undergo a peer review under this chapter shall engage the services of a practitioner or firm holding a permit issued under section 466-7 to perform the following procedures to supplement the peer review report:

- (1) Obtain from the reviewed firm a list of Hawaii attest engagements included in the scope of the peer review, in accordance with the American Institute of Certified Public Accountants Standards for Performing and Reporting on Peer Reviews;
- (2) Select engagements from the list of engagements obtained from the reviewed firm;
- (3) Obtain from the reviewed firm, the reports, financial statements, work papers, and work product resulting from the attest engagements selected;
- (4) Read and compare the reports, work papers, and work product to an appropriate disclosure checklist to evaluate the firm's compliance with professional standards; and
- (5) Document all instances of noncompliance with professional standards detected while performing the procedures listed in this section.

(b) The procedures required by this section shall be performed in accordance with AT section 201 of the Statements on Standards for Attestation Engagements adopted by the American Institute of Certified Public Accountants.

(c) The Hawaii supplement to the peer review report to the firm and to the board shall state, at a minimum, the following:

- (1) Name of firm;
- (2) Date the Hawaii supplement to the peer review report was completed;
- (3) Period that was reviewed;
- (4) Any Hawaii office or offices selected;
- (5) Number and type of Hawaii engagements reviewed;
- (6) Any limitations that may have been imposed upon the peer reviewer in complying with subsection (a), including the selection of Hawaii engagements and peer review standards by the peer reviewer; provided that the acceptability of the limitations shall be subject to board approval; and
- (7) The procedures performed and any instances of noncompliance with professional standards found.

(d) The practitioner or firm selected to perform the procedures required by this section shall:

- (1) Hold a permit to practice under section 466-7;
- (2) Not be affiliated with the firm being reviewed; and
- (3) Be recognized as a qualified peer reviewer by a sponsoring organization.

§466-G Retention of documents. (a) Each reviewer shall maintain all documentation necessary to establish that each review conforms to the review standards of the relevant review program, including the review working papers, copies of the review report, and any correspondence indicating the firm's concurrence and non-concurrence, along with any proposed remedial actions and any related implementation.

(b) The documents described in subsection (a) shall be retained by the reviewer for a period of time corresponding to the retention period of the sponsoring organization, and upon request of the board, shall be made available to the board; provided that the document shall be retained for at least one hundred twenty days after the date of completion of the review by the sponsoring organization.

§466-H Reporting to the board. (a) A firm shall submit to the board:

- (1) A copy of the peer review report and the final letter of acceptance from the sponsoring organization, if the report has a rating of "pass";
- (2) A copy of the peer review report, the firm's letter of response, the corrective action letter, and the final letter of acceptance if the report has a rating of "pass with deficiency" or "fail"; or
- (3) A copy of any report or Part I and any other public portion of the report resulting from any inspection by the public company accounting oversight board firm inspection program together with documentation of any significant deficiencies, findings, and the firm's response.

(b) For peer reviews scheduled after December 31, 2014, any report or document required to be submitted under subsection (a) shall be filed with the board as follows:

- (1) Firms enrolled in the American Institute of Certified Public Accountants and Hawaii Society of Certified Public Accountants peer review programs and administered by the Hawaii Society of Certified Public Accountants, within ten days of receipt of the notice of

completion from the Hawaii Society of Certified Public Accountants, shall complete the peer review compliance reporting form under section 466-E and submit the form to the board along with the required documents;

- (2) Firms otherwise enrolled in the American Institute of Certified Public Accountants peer review program, including those whose peer reviews are administered by the National Peer Review Committee, within ten days of receipt of the notice of completion from the sponsoring organization, shall complete the peer review compliance reporting form under section 466-E and submit the form to the board along with the required documents;
- (3) Firms enrolled in the public company accounting oversight board inspection program shall, within ten days of receipt of the issuance of the Part I report from the public company accounting oversight board, complete the peer review compliance reporting form required by section 466-E and submit the form to the board along with the required documents; and
- (4) Firms enrolled in any other peer review program approved by this part shall submit the report generated by that review process and all associated documentation to the board in a form acceptable to the board.

(c) Any report or document submitted to the board under this section, including the board's peer review compliance reporting form, shall be confidential.

§466-I Appeals. (a) A firm shall have ten days after the filing of the peer review compliance reporting form to appeal a "pass with deficiency" or a "fail" rating that may result in the denial, termination, or nonrenewal of a permit to practice.

(b) A firm may also appeal the findings or conclusions of any peer review process under this part that results in the denial, termination, or nonrenewal of a permit to practice.

(c) The appeal process under this section shall include the postponement of any adverse action during the pendency of the appeal.

§466-J Procedures for sponsoring organization. (a) To qualify as a sponsoring organization, a third-party entity shall submit a peer review administration plan to the board for review and approval. The peer review administration plan shall:

- (1) Establish a peer review report committee and any necessary subcommittees and provide professional staff as needed for the operation of the peer review program;
- (2) Establish a program to communicate to firms participating in the peer review program the latest developments in peer review standards and the most common findings in the peer reviews conducted by the sponsoring organization;
- (3) Establish procedures for resolving any disagreement that may arise out of the performance of a peer review;
- (4) Establish procedures to resolve matters that may lead to the dismissal of a firm from the peer review program;
- (5) Establish procedures to evaluate and document the performance of each peer reviewer, including procedures related to the disqualification of a reviewer who does not meet the American Institute of Certified Public Accountants standards;

- (6) Require the maintenance of records of peer reviews conducted under the program in accordance with the records retention rules of the American Institute of Certified Public Accountants and this part; and
- (7) Provide for periodic reports to the board on the results of the peer review program; provided that reports submitted to the board shall not contain information concerning specific firms or peer reviewers.
 - (b) A sponsoring organization:
 - (1) Shall be subject to review and oversight by the board;
 - (2) Shall not require firms or the firms' owners or employees to become members of the sponsoring organization to participate in a peer review; and
 - (3) Shall charge the same rate for peer review services to members and nonmembers.
 - (c) The public company accounting oversight board shall be exempt from the requirements of this section.

§466-K Oversight of sponsoring organizations. (a) The board shall retain oversight of sponsoring organizations through the peer review oversight committee described in section 466-L.

(b) The board shall periodically publish a list of sponsoring organizations that have been approved by the board.

§466-L Peer review oversight committee. (a) The board shall establish a peer review oversight committee for the purpose of:

- (1) Monitoring sponsoring organizations to ensure that peer reviews are being conducted and reported in accordance with standards for performing and reporting on peer reviews adopted by the American Institute of Certified Public Accountants Peer Review Board;
- (2) Reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review standards of any applicable peer review organization and this part; and
- (3) Reporting to the board on the conclusions and recommendations reached as a result of performing the functions in paragraphs (1) and (2).

(b) Except to the extent otherwise required under this section and section 466-K(b), information concerning a specific firm or reviewer obtained by the peer review oversight committee during oversight activities shall be confidential and shall not be subject to discovery, pursuant to section 466-B, and reports submitted to the board by the peer review oversight committee shall not contain information concerning specific firms or reviewers. Members of the peer review oversight committee shall be required to execute confidentiality statements for the sponsoring organization that they oversee.

(c) Effective January 1, 2013, the peer review oversight committee shall consist of three individuals who hold permits to practice under section 466-7. No member of the peer review oversight committee shall be a current member of the board, the Hawaii Society of Certified Public Accountants Peer Review or Professional Ethics Committees, or the American Institute of Certified Public Accountants Professional Ethics Executive Committee. The members shall have significant experience with attest engagements and currently be in the practice of public accountancy at the partner or equivalent level. The member's firm shall have received a report with a rating of pass or an unmodified opinion from its last peer review.

(d) The peer review oversight committee shall make an annual recommendation to the board as to the qualifications of an approved sponsoring organization to continue as an approved sponsoring organization on the basis of the results of the following procedures:

- (1) Where the sponsoring organization is:
 - (A) The American Institute of Certified Public Accountants;
 - (B) A state certified public accountant society, including the Hawaii Society of Certified Public Accountants, fully involved in administering the American Institute of Certified Public Accountants peer review program; or
 - (C) The public company accounting oversight board, the peer review oversight committee shall review the published reports of the entity or the entity's successor to determine whether there is an acceptable level of oversight; and
- (2) Where the sponsoring organization is other than any organization listed in paragraph (1), the peer review oversight committee shall perform the following functions:
 - (A) At least one member of the peer review oversight committee shall attend at least one meeting of the sponsoring organization's peer review committee; and
 - (B) During these visits, the peer review oversight committee members shall:
 - (i) Meet with the organization's peer review committee during the committee's consideration of peer review documents;
 - (ii) Evaluate the organization's procedures for administering the peer review program;
 - (iii) Examine, on the basis of a random selection, a number of reviews performed by the organization to include, at a minimum, a review of the report on the peer review, the firm's response to the matters discussed, the sponsoring organization's letter of acceptance outlining any additional corrective or monitoring procedures, and the required technical documentation maintained by the sponsoring organization on the selected reviews; and
 - (iv) Expand the examination of peer review documents if significant deficiencies, problems, or inconsistencies are encountered during the analysis of the materials.
- (e) In the evaluation of policies and procedures of sponsoring organization applicants, the peer review oversight committee shall:
 - (1) Examine the policies as drafted by the applicant to determine whether the policies provide reasonable assurance of conforming to the standards for peer reviews;
 - (2) Evaluate the procedures proposed by the applicant to determine whether:
 - (A) Assigned reviewers are appropriately qualified to perform the review for the specific firm;
 - (B) Reviewers are provided with appropriate materials;
 - (C) The applicant has provided for consultation with the reviewers on problems arising during the review and that specified occurrences requiring consultation are outlined;
 - (D) The applicant has provided for the assessment of the results of the review; and

(E) The applicant has provided for an independent report acceptance body that considers and accepts the reports of the review and requires corrective actions by firms with significant deficiencies; and

(3) Make recommendations to the board as to approval of the applicant as a sponsoring organization.

(f) Annually, the peer review oversight committee shall provide the board with a report on the continued reliability of sponsoring organizations' peer reviews. The peer review oversight committee report shall provide reasonable assurance that peer reviews are being conducted and reported on consistently and in accordance with the Standards for Performing and Reporting on Peer Review adopted by the American Institute of Certified Public Accountants. A summary of oversight visits shall be included with the annual report.

§466-M Oversight of peer reviewers for a Hawaii supplemental peer review. (a) A peer reviewer for a Hawaii supplement to the peer review report under section 466-F shall be a person who:

(1) Holds a permit to practice public accountancy under section 466-7; and

(2) Is not affiliated with the firm being reviewed.

(b) The board shall retain oversight of the peer reviewers for a Hawaii supplement to the peer review report by monitoring the peer reviewers to ensure that the peer reviewers are in compliance with subsection (a) and that peer reviews are conducted in accordance with the standards established under section 466-F.

(c) Information concerning any peer reviewer that is obtained during the board's peer review oversight activities shall be confidential as required by section 466-B.

(d) The board shall annually assess the qualifications of all peer reviewers for a Hawaii supplement to the peer review report based on a random selection of each reviewer's published Hawaii supplement to the peer review reports and shall determine whether the published reports comply with subsection (b). The board may suspend a person from being a peer reviewer for a Hawaii supplement to the peer review report for a period not to exceed one year for failure to comply with subsection (b).

(e) A peer reviewer suspended under subsection (d) may appeal the suspension to the board at a public hearing that shall be an action or proceeding subject to discovery under the provisions of section 466-B(c)."

SECTION 2. Chapter 466, Hawaii Revised Statutes, is amended by designating sections 466-1 through 466-17 as part I and inserting a title before section 466-1 to read as follows:

"PART I. GENERAL PROVISIONS"

SECTION 3. Act 66, Session Laws of Hawaii 2010, is amended as follows:

1. By amending section 3 to read:

"SECTION 3. Section 466-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) An applicant for the initial issuance or renewal of a permit shall have:

(1) A valid license;

- (2) Completed continuing professional education hours, the content of which shall be specified by the board which may provide for special consideration by the board to applicants for permit renewal when, in the judgment of the board, full compliance with all requirements of continuing education cannot reasonably be met;
 - (3) Completed an application;
 - (4) Paid appropriate fees and assessments; and
 - (5) ~~[Undergone any applicable]~~ In the case of a renewal, undergone and provided proof of having undergone the peer review process [approved by the board of accountancy pursuant to section 466-13.] pursuant to part .”
2. By amending section 9 to read:

“SECTION 9. This Act shall take effect upon its approval; ~~provided that sections 2, 3, 4, and 5 shall take effect one year after the board of public accountancy reports the adoption of rules pursuant to section 7 of this Act.]”~~

3. By repealing section 7.

[“SECTION 7. — The board of public accountancy shall:

- (1) ~~Adopt rules pursuant to section 466-13(d), Hawaii Revised Statutes, in section 5 of this Act; and~~
- (2) ~~Report the adoption of the rules under paragraph (1) to the legislature immediately upon adoption of those rules by means of written notice to the speaker of the house of representatives and the president of the senate.”]~~

SECTION 4. Section 466-13, Hawaii Revised Statutes, is repealed.

SECTION 5. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2012.

(Approved July 10, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 325

H.B. NO. 1777

A Bill for an Act Relating to Production of Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that many businesses, associations, and organizations providing goods and services to the residents of the State, conducting other activities in the State, or otherwise affecting the residents of Hawaii, now operate nationally or globally, and many maintain their business records in a location outside the State.

The legislature further finds that such records may provide significant evidence in criminal investigations or litigation taking place in the State. Crime results in direct and significant harm and losses to citizens, businesses, associations, and other organizations victimized, and indirectly affects the community at large when those entities must raise prices to cover losses in response. In order to effectively investigate and litigate these crimes, Hawaii law enforcement agencies, prosecutors, and criminal defense attorneys must be able to obtain records relevant to all crimes occurring here, and must be able to use these records in court. Thus, Hawaii courts must have the ability to order the production of records by all who possess records relevant to a criminal investigation or litigation taking place here, whether such records are kept in-state or out-of-state.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER CRIMINAL PROCESS RECORDS

§ -1 Definitions. Whenever used in this chapter, unless otherwise apparent from the context:

“Adverse result” includes one or more of the following possible consequences:

- (1) Danger to the life or physical safety of an individual;
- (2) A flight from prosecution;
- (3) The destruction of, potential loss of, or tampering with evidence;
- (4) The intimidation of potential witnesses; or
- (5) Jeopardy to an investigation or undue delay of a trial.

“Applicant” means a law enforcement officer, prosecuting attorney or deputy prosecuting attorney, attorney general or deputy attorney general, or defense attorney who is seeking criminal process under section -2.

“Criminal process” means a search warrant or legal process issued pursuant to chapters 621, 622, and 803; the Hawaii Rules of Penal Procedure; and any other legal process signed by a judge or clerk of the district or circuit court and issued in a criminal matter which allows the search for or commands production of records that are in the actual or constructive possession of the recipient, regardless of whether the recipient or the records are physically located within the State.

“Defense attorney” means an attorney of record for a person charged with a crime, when such attorney is seeking the issuance of criminal process for the defense of the criminal case.

“Properly served” means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to the recipient addressee of criminal process.

“Recipient” means a person, as defined in section 701-118, or a business, as defined in section 487J-1, that has conducted business or engaged in transactions occurring at least in part in this State upon whom criminal process issued under this chapter is properly served.

§ -2 Production of records. (a) This section shall apply to any criminal process allowing for search of or commanding production of records that are in the actual or constructive possession of a recipient who is properly served outside the State, regardless of whether the recipient or the records are physically located within the State.

(b) When properly served with criminal process issued under this section, the recipient shall provide the applicant all records sought pursuant to the criminal process. The records shall be produced within twenty business days of service of the criminal process, unless the process requires earlier production. An applicant may consent to a recipient's request for additional time to comply with the criminal process.

(c) Criminal process issued under this section shall contain the following language in bold type on the first page of the document:

"This [warrant, subpoena, order] is issued pursuant to § -2, Hawaii Revised Statutes. Production is due within twenty business days of service, unless a shorter time is stated herein, or the applicant consents to a recipient's request for additional time to comply."

(d) If the issuing court finds reason to suspect that failure to produce records within twenty business days would cause an adverse result, the criminal process may require production of records within less than twenty business days. The court may reasonably extend the time required for production of the records upon finding that the recipient has shown good cause for requesting that extension and that an extension of time would not cause an adverse result.

(e) When properly served with criminal process issued under this section, a recipient who seeks to quash the criminal process may seek relief from the issuing court only within the time originally required for production of records. The issuing court shall hear and decide the motion no later than five court days after the motion is filed. An applicant's consent, under subsection (b), to a recipient's request for additional time to comply with the criminal process shall not extend the date by which a recipient who seeks relief may do so.

§ -3 Authenticity of records; verification; affidavit, declaration, or certification. (a) Upon written request from the applicant or if ordered by the issuing court, the recipient of criminal process shall verify the authenticity of records that the recipient produces by providing an affidavit or declaration that complies with subsection (b). The requirements of rule 902(11) of the Hawaii Rules of Evidence regarding business records as evidence may be satisfied by an affidavit, or declaration that complies with subsection (b), without the need for testimony from the custodian of records, regardless of whether the business records were produced by a foreign or Hawaii entity.

(b) To be admissible without testimony from the custodian of records, a business record shall be accompanied by an affidavit or declaration from its records custodian or other qualified person, including contact information for the person completing the affidavit or declaration and an attestation to the following:

- (1) The person is the custodian of the record or sets forth evidence that the witness is qualified to testify about the record;
- (2) The record was made at or near the time of the act, condition, or event set forth in the record by, or from information transmitted by, an individual with knowledge of those matters;
- (3) The record was kept in the course of the regularly conducted activity;
- (4) The record was made by the regularly conducted activity as a regular practice;
- (5) The identity of the record and the mode of its preparation; and
- (6) The record is either the original or a duplicate that accurately reproduces the original.

(c) A party intending to offer a record into evidence under this section shall provide written notice of that intention to all adverse parties, and shall

make the record and affidavit or declaration available for inspection sufficiently in advance of the party's offer into evidence to provide an adverse party with a fair opportunity to challenge the party. A motion opposing admission in evidence of the record shall be made and determined by the issuing court before trial and with sufficient time to allow the party offering the record to, if the motion is granted, produce the custodian of the record or other qualified person at trial, without creating hardship on the party or on the custodian of the record or other qualified person.

(d) Failure by a party to timely file a motion under subsection (c) shall constitute a waiver of objection to admission of the evidence, but the court for good cause shown may grant relief from the waiver. If the court grants relief from the waiver, and thereafter determines the custodian of the record shall appear, a continuance of the trial may be granted to provide the proponent of the record sufficient time to arrange for the necessary witness to appear.

(e) Nothing in this section shall preclude either party from calling the custodian of the record or other witness to testify regarding the record.

§ -4 Service of process issued by or in another state. When a Hawaii recipient is served with process issued by or in another state, and such process on its face purports to be a valid criminal process, the Hawaii recipient shall comply with that process as if that process had been issued by a Hawaii court.

§ -5 Recipients' immunity from liability. A recipient of criminal process under this chapter, and any other person that responds to such process is immune from civil and criminal liability for complying with the process, and for any failure to provide notice of any disclosure to the person who is the subject of or identified in the disclosure.

§ -6 Issuance of criminal process. A judge of the district or circuit court may issue any criminal process to any recipient at any address within or out of the State, for any matter over which the court has criminal jurisdiction pursuant to section 701-106. This section does not limit a court's authority to issue warrants or legal process under other state law."

SECTION 3. Section 836-1, Hawaii Revised Statutes, is amended by amending the definition of "summons" to read as follows:

"“Summons” includes a subpoena[;] ad testificandum and subpoena duces tecum, order, or other notice requiring the appearance of a witness.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New Statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 10, 2012.)

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that although many operators of transient accommodations are in compliance with applicable state and county laws, there are a sizeable number of operators who are not. Failure to comply denies the State and counties of the transient accommodations taxes and general excise taxes they are due.

The legislature further finds that section 521-43(f), Hawaii Revised Statutes, as part of the landlord-tenant code, requires a landlord who lives without the State or on a different island to designate an agent who resides on the same island where the rental unit is located to act in the landlord's behalf.

Section 521-7, Hawaii Revised Statutes, also clearly states that the only exemption from the landlord-tenant code for transient rentals is transient occupancy on a day-to-day basis in a hotel or motel. Since all other transient accommodations are subject to the requirements of the landlord-tenant code, operators of transient accommodations who live without the State or on a different island are already required by law to designate an on-island agent to act on their behalf. This Act is intended to clarify that this requirement applies to all operators of transient accommodations who live without the State or on a different island.

The legislature also finds that the landlord-tenant code focuses on consumer protection. Requiring operators who live on a different island from their transient accommodation property or out of state to designate a local contact is an important aspect of consumer protection. A contact person located on the same island as the transient accommodation is essential in the case of an emergency or natural disaster. An on-island contact is also vital if any questions, concerns, or property issues arise regarding the transient accommodation.

The legislature also finds that requiring community, condominium, and other similar associations to provide relevant information to the department of taxation on all operators who may be leasing their property as a transient accommodation will help ensure compliance with appropriate state and county tax laws. Requiring the counties to provide the department of taxation with relevant information about operators of transient accommodations will permit additional enforcement of relevant state and county tax laws.

Accordingly, the purpose of this Act is to foster consumer protection in the State's transient accommodations market and ensure greater compliance with applicable state and county laws by operators of transient accommodations in the State.

SECTION 2. Chapter 237D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237D- Local contact; relevant information; advertisements; transient accommodations. (a) Any operator of a transient accommodation shall designate a local contact residing on the same island where the transient accommodation is located.

(b) The operator shall furnish the name, address, and contact information of the local contact to any association of homeowners, community association, condominium association, cooperative, or any other nongovernmental entity with covenants, bylaws, and administrative provisions with which the operator's compliance is required for the property where the transient accommoda-

tion is located. The operator shall notify and provide updated information to that association or nongovernmental entity within sixty calendar days of any change in the name, address, and contact information of the local contact.

Any person or entity who wilfully fails to supply information required under this subsection shall be subject to the penalties under section 231-35; provided that a person or entity shall not be subject to any term of imprisonment or probation under section 231-35.

(c) Any nongovernmental entity with covenants, bylaws, and administrative provisions which is formed pursuant to chapter 514A, 514B, or 421J, shall provide the department with all relevant information, maintained in its records, related to all operators who may be leasing their property as transient accommodations by December 31 of each year, or within sixty calendar days of any change in the relevant information, operation, or ownership of the transient accommodation. Any person or entity who wilfully fails to supply information required under this subsection shall be subject to the penalties under section 231-35; provided that a person or entity shall not be subject to any term of imprisonment or probation under section 231-35.

(d) Each county shall provide the department with information necessary to enforce this section. Notwithstanding any provision of title 14 to the contrary, the department shall provide the counties with information necessary for the enforcement of county real property tax laws.

(e) The name and phone number of the local contact for each transient accommodation shall be included in any transient accommodation contract or written rental agreement and shall be prominently posted in the transient accommodation. The local contact shall reside on the same island as the transient accommodation, and shall meet all other requirements under subsection (a). Any person or entity who wilfully fails to supply information required under this subsection shall be subject to the penalties under section 231-35; provided that a person or entity shall not be subject to any term of imprisonment or probation under section 231-35.

(f) The registration identification number issued pursuant to section 237D-4 shall be provided on a website or by online link and displayed in all advertisements and solicitations on websites regarding transient accommodations for which the registration number is issued.

(g) The payment of any penalty assessed under this section shall be in addition to the requirements under section 237D-9.

(h) For the purposes of this section:

“Local contact” means an individual or company contracted by the operator of the transient accommodation to provide services required by this section. Nothing in this section shall be deemed to create an employer-employee relationship between an operator and its local contact.

“Relevant information” means the operator’s name, address, contact information, registration identification number issued pursuant to section 237D-4, and website address if advertising or soliciting the transient accommodation on the Internet.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2012; provided that this Act shall be repealed on December 31, 2015.

(Became law on July 10, 2012, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Highway Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to make amendments to the State's ignition interlock law recommended by the Hawaii ignition interlock implementation task force pursuant to Act 171, Session Laws of Hawaii 2008, as amended by Act 88, Session Laws of Hawaii 2009, and Act 166, Session Laws of Hawaii 2010. This Act also expands applicability of the ignition interlock law.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

“§286-A License revoked for operating a vehicle under the influence of an intoxicant; eligibility for license renewal. Notwithstanding any other law to the contrary, any person arrested for a violation of section 291E-61 or 291E-61.5 after December 31, 2010, whose license is revoked pursuant to this part or section 291E-61, and who otherwise qualifies for a permit under section 291E-44.5 or 291E-61, may apply for a renewal or reactivation of a driver's license as provided in section 286-107 or 286-107.5; provided that:

- (1) The license renewal or reactivation shall be for the sole purpose of obtaining or extending a permit issued pursuant to section 291E-44.5 or 291E-61;
- (2) No physical driver's license shall be issued to the person; and
- (3) The driver's license shall expire as provided in section 286-106 or upon the end of the revocation period, whichever occurs first.”

SECTION 3. Chapter 291E, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

“§291E-A Repeat intoxicated driver after December 31, 2010; eligibility to obtain motor vehicle registration and number plates. Any repeat intoxicated driver arrested for a violation of section 291E-61 or 291E-61.5 after December 31, 2010, may request that the director remove any stopper imposed on the motor vehicle registration files pursuant to part III of chapter 291E. Upon request, the director shall remove the stopper as soon as practicable.”

SECTION 4. Chapter 291E, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

“§291E-B Petition for ignition interlock instruction permit and ignition interlock permit; eligibility; requirements. (a) This section shall apply to the following:

- (1) Any person subject to a lifetime license revocation pursuant to part III, as that part was in effect before January 1, 2011, or part XIV of chapter 286, as that part was in effect before January 1, 2002;
- (2) Any person who was arrested pursuant to section 291E-61 or 291E-61.5 before January 1, 2011, and whose license revocation period has not terminated;

- (3) Except as provided in section 286-A, any person whose license was expired, had a learner's permit or instruction permit, or who was otherwise unlicensed at the time of arrest pursuant to section 291E-61 or 291E-61.5; and
- (4) Any person arrested pursuant to section 291E-61 or 291E-61.5 whose driver's license from another state is expired or will expire during the license revocation period and who applies for a permit under this section.

(b) Any person under subsection (a) may file a petition in the district court for permission to apply for an ignition interlock instruction permit that will allow the person to take the driving demonstration portion of the driver's license examination. The petition shall be filed with the clerk of the district court in the district in which the arrest occurred and shall be accompanied by the required filing fee for civil actions. The petition shall include the following:

- (1) A certified court abstract establishing that other than the instant offense, the petitioner has no pending traffic matters, outstanding fines, outstanding court costs, and outstanding restitution;
- (2) A certified statement from the director establishing that the petitioner has complied with all requirements, including payment of applicable fees, undergone substance abuse assessment and treatment, and surrendered motor vehicle registration and vehicle number plates, if applicable; and
- (3) A proposed order.

In determining whether the petitioner may be granted an ignition interlock instruction permit, the district court shall consider whether the requirements of paragraphs (1) through (3) are met and may also consider any other factors, including but not limited to the petitioner's criminal and traffic record after receiving a lifetime license revocation, and based on the foregoing, the district court shall determine whether an order allowing the petitioner to apply to the director for an ignition interlock instruction permit and requiring the director to remove any stopper placed on the petitioner's motor vehicle registration files pursuant to part III of chapter 291E, as applicable, shall be issued; provided that the petitioner complies with applicable driver licensing requirements under part VI of chapter 286, and proof of financial responsibility under chapter 287. Upon submission of the order to the director, the director shall remove any stopper placed on the person's motor vehicle registration files and issue a certified statement indicating eligibility for an ignition interlock instruction permit.

(c) To apply for an ignition interlock instruction permit, the person shall:

- (1) Present the certified statement of eligibility for ignition interlock instruction permit, as provided in subsection (b), to the examiner of drivers;
- (2) Pass the written portion of the driver's license examination in accordance with section 286-108;
- (3) Install an ignition interlock device on a vehicle to be used for the driving demonstration portion of the driver's license examination; and
- (4) Submit to the director the following:
 - (A) Proof of passing the written portion of the driver's license examination;
 - (B) Proof of installation of the ignition interlock device;
 - (C) Proof of motor vehicle insurance; and
 - (D) Proof of a valid motor vehicle registration.

Upon receipt of proof of the requirements of paragraph (4), the director shall issue an ignition interlock instruction permit that allows the person to drive a category 1, 2, or 3 vehicle under section 286-102(b) that is equipped with an ignition interlock device for the period as provided in section 286-110; provided that a holder of the ignition interlock instruction permit for a category 3 vehicle shall be accompanied by a person who is twenty-one years of age or older and licensed to operate a category 3 vehicle. The licensed person shall occupy a passenger seat beside the permit holder while the category 3 vehicle equipped with an ignition interlock device is being operated. For the purposes of this section, "examiner of drivers" shall have the same meaning as provided in section 286-2.

(d) Upon showing the ignition interlock instruction permit to the examiner of drivers, an applicant may take the driving demonstration portion of the driver's license examination in accordance with section 286-108. Upon successful completion of the driving demonstration portion of the driver's license examination, an applicant may apply to the director for an ignition interlock permit pursuant to section 291E-44.5. If granted, the ignition interlock permit shall expire as provided in section 286-106 or upon the end of the revocation period, whichever occurs first.

(e) After a minimum period of five years from the issuance of an ignition interlock permit under subsection (d), a person subject to a lifetime license revocation for operating a motor vehicle while under the influence of an intoxicant may file a petition in the district court to reinstate the person's eligibility for license and privilege to operate a vehicle without an ignition interlock device. The petition shall be filed with the clerk of the district court in the district in which the arrest occurred and shall be accompanied by the required filing fee for civil actions. A copy of the petition shall be served on the prosecuting attorney in the county in which the petition is filed. The petition shall include the following:

- (1) A certified court abstract establishing that:
 - (A) The petitioner has no pending traffic matters, outstanding fines, outstanding court costs, and outstanding restitution; and
 - (B) The petitioner has not been convicted of any violation of section 291E-66 during the five-year period immediately preceding the petition;
- (2) A certified statement from the director establishing that the petitioner has complied with all requirements, including payment of applicable fees, undergone substance abuse assessment and treatment, and surrendered motor vehicle registration and vehicle number plates, if applicable;
- (3) A certified statement from the director of transportation establishing that:
 - (A) The petitioner has had an ignition interlock device installed in a vehicle without a cumulative break of more than thirty days during the five years immediately preceding the petition; and
 - (B) The petitioner has not attempted to operate a vehicle with .04 or more grams of alcohol per two hundred ten liters of breath during the two years immediately preceding the petition;
- (4) A certificate of service demonstrating the place, time, and manner of service of the petition on the prosecuting attorney;
- (5) A certified record from the Hawaii Criminal Justice Information System that shows the petitioner's current criminal history record;
- (6) A statement from the petitioner establishing where the petitioner has resided since the ignition interlock permit was issued;

- (7) A statement from the petitioner as to whether the petitioner has undergone substance abuse assessment and treatment and the outcome of this assessment and treatment; and
- (8) A proposed order.

Within ten days of service of the petition, the prosecuting attorney may submit a written request for a hearing on the petition. The district court shall set a hearing and the prosecuting attorney shall serve notice of the hearing upon the petitioner at the petitioner's address shown on the petition and in accordance with the applicable court rules pertaining to service of civil process. The prosecuting attorney shall appear at the hearing on the petition and may offer evidence and argument in support of or against the granting of the petition. If the requirements of paragraphs (1) through (8) are met and it appears to the court that the petitioner no longer poses a danger to other persons using streets or highways and is not likely to operate a vehicle under the influence of an intoxicant, the district court shall grant the petition and issue an order declaring the person eligible for relicensing and reregistration, if applicable. In making its decision, the court, in addition to any other evidence, may consider the petitioner's ignition interlock program driving records and history. If the prosecuting attorney fails to submit a timely request for a hearing, and the requirements of paragraphs (1) through (8) are met, the district court shall grant the petition and issue an order declaring the petitioner eligible for relicensing and reregistration, if applicable. If the court denies the petition, the person may file another petition under this subsection no sooner than one year from the date of the court order.

(f) Nothing in this section shall be interpreted to allow repeat intoxicated driving to be treated as a first time offense for purposes of relicensing."

SECTION 5. Section 286-102, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) ~~[(a)]~~ Notwithstanding sections 291E-B and 291-44.5, in addition to other qualifications and conditions by or pursuant to this part, the right of an individual to hold a motor vehicle operator's license or permit issued by the county is subject to the requirements of section 576D-13.

Upon receipt of certification from the child support enforcement agency pursuant to section 576D-13 that an obligor or individual who owns or operates a motor vehicle is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, the examiner of drivers shall suspend the license and right to operate motor vehicles and confiscate the license of the obligor. The examiner of drivers shall not reinstate an obligor's or individual's license until the child support enforcement agency, the office of child support hearings, or the family court issues an authorization that states the obligor or individual is in compliance with an order of support or has complied with a subpoena or warrant relating to a paternity or child support hearing.

The licensing authority may adopt rules pursuant to chapter 91 to implement and enforce the requirements of this section."

SECTION 6. Section 287-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Whenever a driver's license has been suspended or revoked:

- (1) Pursuant to section 291E-65 or part III of chapter 291E, except as provided in section ~~[[291E-41(g)]]~~ 291E-41(f);
- (2) Upon a conviction of any offense pursuant to law, except where the conduct giving rise to the instant offense is also a violation of part III of chapter 291E and a requirement to furnish and maintain

proof of financial responsibility has already been imposed pursuant to that part; or

(3) In the case of minors, pursuant to part V of chapter 571, the license shall not at any time thereafter be issued to the person whose license has been suspended or revoked, nor shall the person thereafter operate a motor vehicle, unless and until the person has furnished and thereafter maintains proof of financial responsibility; provided that this section shall not apply to a license suspended or revoked pursuant to section 291E-61(b)(1) or 291E-64(b)(1), any conviction of a moving violation, any administrative license suspension pursuant to chapter 291A, or the first conviction within a five-year period for driving without a valid motor vehicle insurance policy.

This subsection shall not apply to a suspension or revocation of a provisional license under section 286-102.6(d)."

SECTION 7. Section 291E-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definitions of "administrative revocation", "alcohol enforcement contact", and "repeat intoxicated driver" to read:

"Administrative revocation" means termination of the respondent's[;

(4) ~~License]~~ license, and the privilege to operate a vessel underway on or in the waters of the State pursuant to part III[; and

(2) ~~Registration of any motor vehicle registered to a respondent found to be a repeat intoxicated driver],~~

but does not include any revocation imposed under section 291E-61 or 291E-61.5.

"Alcohol enforcement contact" means:

- (1) Any administrative revocation ordered pursuant to part III;
- (2) Any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on or before December 31, 2001;
- (3) Any suspension or revocation of any license [~~or motor vehicle registration, or both,~~] or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for alcohol concentration;
- (4) Any conviction in this State for operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol;
- (5) Any conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol.

"Repeat intoxicated driver" means a person who previously:

- (1) Has been convicted, during the five years preceding the date of arrest, of one or more violations under:
 - (A) Section 291E-61 or 291E-61.5, as a result of having consumed alcohol; or
 - (B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001;
- (2) Has been convicted, during the ten years preceding the date of arrest, of three or more violations under:
 - (A) Section 291E-61 or 291E-61.5, as a result of having consumed alcohol; or

- (B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001; or
- (3) Has had one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date of arrest, two prior alcohol enforcement contacts or drug enforcement contact during the ~~[seven]~~ five years preceding the date of arrest, or three or more prior alcohol enforcement contacts or drug enforcement contact during the ten years preceding the date of arrest.”
2. By repealing the definitions of “temporary number plates” and “temporary vehicle registration”.
- [“~~“Temporary number plates” refers to the temporary number plates given, along with the temporary vehicle registration, to a respondent pursuant to section 291E-33, but does not include a temporary number plate attached to a new vehicle pursuant to sections 249-7.5 and 286-53.~~
- ~~“Temporary vehicle registration” means the portion of the notice of administrative revocation that, when completed by the arresting law enforcement officer, permits the respondent to drive a vehicle registered in the name of the respondent for thirty days or until the time established by the director under part III.”]~~

SECTION 8. Section 291E-6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The vendor selected for installation and maintenance of ignition interlock devices pursuant to chapter 291E shall be audited annually by the director of transportation pursuant to this section and the rules adopted thereunder. The director of transportation may require the vendor to pay for all or part of the costs incurred in conducting the audit.”

SECTION 9. Section 291E-31, Hawaii Revised Statutes, is amended to read as follows:

“§291E-31 **Notice of administrative revocation; effect.** As used in this part, the notice of administrative revocation:

- (1) Establishes that the respondent’s license and privilege to operate a vehicle in the State or on or in the waters of the State shall be terminated:
 - (A) Thirty days after the date the notice of administrative revocation is issued in the case of an alcohol related offense;
 - (B) Forty-four days after the date the notice of administrative revocation is issued in the case of a drug related offense; or
 - (C) Such later date as is established by the director under section 291E-38,
 if the director administratively revokes the respondent’s license and privilege;
- ~~[(2) Establishes that the registration of any motor vehicle registered to a respondent who is a repeat intoxicated driver shall be terminated thirty days after the date of an arrest pursuant to section 291E-33(e);~~
- ~~[(3)]~~ (2) Establishes the date on which administrative revocation proceedings against the respondent were initiated;
- ~~[(4)]~~ (3) Serves as a temporary permit, if applicable, to operate a vehicle as provided in section 291E-33; and
- ~~[(5)]~~ (4) Notifies the respondent that the respondent shall obtain an ignition interlock permit and keep an ignition interlock device installed

and operating in any vehicle the respondent operates during the revocation period if the respondent had a valid license at the time of the arrest.”

SECTION 10. Section 291E-33, Hawaii Revised Statutes, is amended to read as follows:

“§291E-33 Probable cause determination; issuance of notice of administrative revocation; procedures. (a) Whenever a person is arrested for a violation of section 291E-61 or 291E-61.5 on a determination by the arresting law enforcement officer that:

- (1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20; and
- (2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant;

the law enforcement officer [~~immediately~~] shall take possession of any license held by the person and request the person to take a test for alcohol concentration, in the case of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test, a blood test, or both, pursuant to section 291E-11, but that the person may refuse to submit to testing under this chapter. In the case of a drug related offense, the person shall elect to take a blood test, a urine test, or both, pursuant to section 291E-11, after being informed that the person may refuse to submit to testing under this chapter.

(b) When applicable under section 291E-15, the law enforcement officer also shall:

- (1) Inform the person of the sanctions under section 291E-41, including the sanction for refusing to take a breath, blood, or urine test, if applicable; and
- (2) Ask the person if the person still refuses to submit to a breath, blood, or urine test, upon the law enforcement officer’s determination that, after the person has been informed by a law enforcement officer that the person may refuse to submit to testing, the person under arrest has refused to submit to a breath, blood, or urine test.

[~~Thereafter,~~] (c) After taking action pursuant to subsections (a) and (b), as applicable, the law enforcement officer shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest: the person was unlicensed; the person’s license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person’s possession.

[~~(b)~~] (d) Whenever a law enforcement officer determines that, as the result of a blood or urine test performed pursuant to section 291E-21, there is probable cause to believe that a person being treated in a hospital or medical facility has violated section 291E-61 or 291E-61.5, the law enforcement officer immediately shall take possession of any license held by the person and shall complete and issue to the person a notice of administrative revocation and indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit unless, at the time the notice was issued: the person was unlicensed; the person’s license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person’s possession.

~~[(e) Whenever a respondent under this section is a repeat intoxicated driver, the arresting law enforcement officer shall take possession of the motor vehicle registration and, if the motor vehicle being driven by the respondent is registered to the respondent, remove the number plates and issue a temporary motor vehicle registration and temporary number plates for the motor vehicle. No temporary motor vehicle registration or temporary number plates shall be issued if the respondent's registration has expired or been revoked. The applicable police department, upon determining that the respondent is a repeat intoxicated driver, shall notify the director of the appropriate county agency to enter a stopper on the motor vehicle registration files to prevent the respondent from conducting any motor vehicle transactions, except as permitted under this part.]”~~

SECTION 11. Section 291E-34, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) through (e) to read:

~~“(b) The notice, when completed by the law enforcement officer and issued to the respondent, shall contain at a minimum the following information relating to the incident that gives rise to the issuance of the notice of administrative revocation:~~

- ~~(1) Information identifying the respondent;~~
- ~~(2) The specific violation for which the respondent was arrested;~~
- ~~(3) The date issued and the date the administrative revocation is scheduled to go into effect;~~
- ~~(4) The expiration date of the temporary permit[, and the temporary motor vehicle registration and temporary number plates if applicable]; and~~
- ~~(5) That the issuance of the notice of administrative revocation will be administratively reviewed.~~

~~(c) The notice shall provide, at a minimum, the following information relating to the administrative review:~~

- ~~(1) That the review is automatic;~~
- ~~(2) That the respondent, within three days of the issuance of the notice of administrative revocation in the case of an alcohol related offense and within seventeen days of the issuance of the notice of administrative revocation in the case of a drug related offense, may submit written information demonstrating why the respondent's license and privilege to operate a vehicle[, and motor vehicle registration if applicable,] should not be administratively revoked;~~
- ~~(3) The address or location where the respondent may submit the information;~~
- ~~(4) That the respondent is not entitled to be present or represented at the administrative review; and~~
- ~~(5) That the administrative review decision shall be mailed to the respondent:~~
 - ~~(A) No later than eight days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and~~
 - ~~(B) No later than twenty-two days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense.~~

~~(d) The notice shall state that, if the respondent's license and privilege to operate a vehicle[, and motor vehicle registration if applicable, are] is not administratively revoked after the review, the respondent's license[, and if applicable, motor vehicle registration and any number plates taken into custody,]~~

shall be returned, unless a subsequent alcohol or drug enforcement contact has occurred, along with a certified statement that the administrative revocation proceedings have been terminated.

(e) The notice shall state that, if the respondent's license and privilege to operate a vehicle~~[-, and motor vehicle registration if applicable, are]~~ is administratively revoked after the review, a decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

- (1) The reasons why the respondent's license and privilege to operate a vehicle~~[-, and motor vehicle registration if applicable, were]~~ is administratively revoked;
- (2) That the respondent may request the director, within six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;
- (3) That, if the respondent's request for an administrative hearing is received by the director within six days of the date the decision was mailed, the hearing shall be scheduled to commence:
 - (A) No later than twenty-five days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and
 - (B) No later than thirty-nine days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense;
- (4) The procedure to request an administrative hearing;
- (5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;
- (6) That the respondent may regain the right to a hearing by requesting the director, within sixty days after the issuance of the notice of administrative revocation, to schedule a hearing;
- (7) That the director shall schedule the hearing to commence no later than thirty days after a request under paragraph (6) is received, but that, except as provided in section ~~[291E-38(k),]~~ 291E-38(j), the temporary permit~~[-, and temporary motor vehicle registration and temporary number plates if applicable,]~~ shall not be extended if the respondent fails to request an administrative hearing within the initial six-day period provided for that purpose;
- (8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated;
- (9) The duration of the administrative revocation and other conditions that may be imposed, including: referral to the driver's education program for an assessment of the respondent's substance abuse or dependence and the need for treatment;
- ~~[(10) That, pursuant to section 291E-48, the director may grant a special motor vehicle registration to a qualified household member or to a co-owner of any motor vehicle owned by the respondent, upon a determination that the person is completely dependent on the motor vehicle for the necessities of life; provided that the special motor vehicle registration shall not be valid for use by the respondent;]~~ and
- ~~[(11)]~~ (10) That the respondent shall obtain an ignition interlock permit in order to operate a vehicle during the revocation period if the respondent had a valid license at the time of the arrest."

2. By amending subsections (g) and (h) to read:

“(g) The notice shall state that, if the administrative revocation is reversed after the hearing, the respondent’s license~~], and if applicable, motor vehicle registration and any number plates taken into custody,~~] shall be returned, along with a certified statement that the administrative revocation proceedings have been terminated.

(h) The notice shall state that, if the administrative revocation is sustained at the hearing, a written decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

- (1) The effective date of the administrative revocation;
- (2) The duration of the administrative revocation;
- ~~[(3) If applicable, the date by which any outstanding motor vehicle number plates issued to the respondent must be surrendered to the director;~~
- ~~(4) If applicable, that failure to surrender any motor vehicle number plates as required is a misdemeanor;~~
- ~~[(5) (3) Other conditions that may be imposed by law, including the use of an ignition interlock device; and~~
- ~~[(6) (4) The right to obtain judicial review.”~~

SECTION 12. Section 291E-35, Hawaii Revised Statutes, is amended to read as follows:

“§291E-35 Immediate restoration of license ~~[and motor vehicle registration].~~ (a) In cases involving an alcohol related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder shows that a respondent had an alcohol concentration less than .08, the director or the arresting law enforcement agency immediately shall return the respondent’s license~~], and if applicable, motor vehicle registration and any number plates taken into custody,~~] along with a certified statement that administrative revocation proceedings have been terminated with prejudice.

(b) In cases involving a drug related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder fails to show the presence, in the respondent’s blood or urine, of any drug that is capable of impairing the respondent’s ability to operate a vehicle in a careful and prudent manner, the director or the arresting law enforcement agency immediately shall return the respondent’s license~~], and if applicable, motor vehicle registration and any number plates taken into custody,~~] along with a certified statement that administrative revocation proceedings have been terminated with prejudice.”

SECTION 13. Section 291E-36, Hawaii Revised Statutes, is amended to read as follows:

“§291E-36 Documents required to be submitted for administrative review; sworn statements. (a) Whenever a respondent has been arrested for a violation of section 291E-61 or 291E-61.5 and submits to a test that establishes: the respondent’s alcohol concentration was .08 or more; the presence, in the respondent’s blood or urine, of any drug that is capable of impairing the respondent’s ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section 291E-21 establishes that the respondent’s alcohol concentration was .08 or more or establishes the presence in the

respondent's blood or urine of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

- (1) A copy of the arrest report or the report of the law enforcement officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that:
 - (A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the respondent was tested pursuant to section 291E-21;
 - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant; and
 - (C) The respondent agreed to be tested or the person was tested pursuant to section 291E-21;
- (2) In a case involving an alcohol related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;
 - (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
- (3) In a case involving an alcohol related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the respondent's alcohol concentration was at, or above, the prohibited level; and
 - (D) The person whose breath or blood was tested is the respondent;
- (4) In a case involving a drug related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use in drug testing;
 - (B) The person conducting the test had been trained and, at the time of the test, was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;

- (5) In a case involving a drug related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) At the time the test was conducted, the person was trained and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated the presence of one or more drugs or their metabolites in the respondent's blood or urine; and
 - (D) The person whose blood or urine was tested is the respondent;
- (6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;
- (7) Any license[, and motor vehicle registration and number plates, if applicable,] taken into possession by the law enforcement officer; and
- (8) A listing of any prior alcohol or drug enforcement contacts involving the respondent.
- (b) Whenever a respondent has been arrested for a violation of section 291E-61 or 291E-61.5 and refuses to submit to a test to determine alcohol concentration or drug content in the blood or urine, the following shall be forwarded immediately to the director:
 - (1) A copy of the arrest report and the sworn statement of the arresting law enforcement officer, stating facts that establish that:
 - (A) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20;
 - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
 - (C) The respondent was informed of:
 - (i) The sanctions of section 291E-41;
 - (ii) The possibility that criminal charges may be filed; and
 - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine; and
 - (D) The respondent refused to be tested;
 - (2) A copy of the notice of administrative revocation issued to the respondent;
 - (3) Any [driver's] license[, and motor vehicle registration and number plates if applicable,] taken into possession; and
 - (4) A listing of all alcohol and drug enforcement contacts involving the respondent."

SECTION 14. Section 291E-37, Hawaii Revised Statutes, is amended to read as follows:

"§291E-37 Administrative review; procedures; decision. (a) The director automatically shall review the issuance of a notice of administrative revocation and shall issue a written decision administratively revoking the license and privilege to operate a vehicle[, and motor vehicle registration if applicable,] or

rescinding the notice of administrative revocation. The written review decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than:

- (1) Eight days after the date the notice was issued in a case involving an alcohol related offense; or
 - (2) Twenty-two days after the date the notice was issued in a case involving a drug related offense.
- (b) The respondent shall have the opportunity to demonstrate in writing why the respondent's license and privilege to operate a vehicle~~[-and motor vehicle registration if applicable,]~~ should not be administratively revoked and, within three days of receiving the notice of administrative revocation, as provided in section 291E-33, shall submit any written information, either by mail or in person, to the director's office or to any office or address designated by the director for that purpose.
- (c) In conducting the administrative review, the director shall consider:
- (1) Any sworn or unsworn written statement or other written evidence provided by the respondent;
 - (2) The breath, blood, or urine test results, if any; and
 - (3) The sworn statement of any law enforcement officer or other person or other evidence or information required by section 291E-36.
- (d) The director shall administratively revoke the respondent's license and privilege to operate a vehicle if the director determines that:
- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
 - (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
 - (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed:
 - (i) That the person may refuse to submit to testing in compliance with section 291E-11; and
 - (ii) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15.
- ~~[(e) The director shall administratively revoke the registration of any vehicle owned or registered to the respondent and take custody of any number plates issued to the respondent if the director determines that the respondent is a repeat intoxicated driver and that:~~
- ~~(1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;~~
 - ~~(2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and~~
 - ~~(3) The evidence proves by a preponderance that:~~
 - ~~(A) The respondent operated the vehicle while under the influence of an intoxicant; or~~
 - ~~(B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed:~~

- (i) ~~That the person may refuse to submit to testing in compliance with section 291E-11; and~~
- (ii) ~~Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15.~~

~~(f)] (e)~~ If the evidence does not support administrative revocation, the director shall rescind the notice of administrative revocation and return the respondent's license[, and if applicable, motor vehicle registration and any number plates taken into custody,] along with a certified statement that administrative revocation proceedings have been terminated.

~~[(g)] (f)~~ If the director administratively revokes the respondent's license and privilege to operate a vehicle, [and motor vehicle registration if applicable,] the director shall mail a written review decision to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen. The written review decision shall:

- (1) State the reasons for the administrative revocation;
- (2) Indicate that the respondent has six days from the date the decision is mailed to request an administrative hearing to review the director's decision;
- (3) Explain the procedure by which to request an administrative hearing;
- (4) Be accompanied by a form, postage prepaid, that the respondent may fill out and mail in order to request an administrative hearing;
- (5) Inform the respondent of the right to review and copy all documents considered at the review, including the arrest report and the sworn statements of law enforcement officers or other persons, prior to the hearing; and
- (6) State that the respondent may be represented by counsel at the hearing, submit evidence, give testimony, and present and cross-examine witnesses, including the arresting law enforcement officer.

~~[(h)] (g)~~ Failure of the respondent to request a hearing within the time provided in section 291E-38(a) shall cause the administrative revocation to take effect for the period and under the conditions provided in the administrative review decision issued by the director under this section. The respondent may regain the right to an administrative hearing by requesting the director, within sixty days of the issuance of the notice of administrative revocation as provided in section 291E-33, to schedule an administrative hearing. The administrative hearing shall be scheduled to commence no later than thirty days after the request is received by the director. The administrative review decision issued by the director under this section shall explain clearly the consequences of failure to request an administrative hearing and the procedure by which the respondent may regain the right to a hearing."

SECTION 15. Section 291E-38, Hawaii Revised Statutes, is amended to read as follows:

"§291E-38 Administrative hearing; procedure; decision. (a) If the director administratively revokes the respondent's license and privilege to operate a vehicle[, and motor vehicle registration if applicable,] after the administrative review, the respondent may request an administrative hearing to review the decision within six days of the date the administrative review decision is mailed. If the request for hearing is received by the director within six days of the date the decision is mailed, the hearing shall be scheduled to commence no later than:

- (1) Twenty-five days from the date the notice of administrative revocation was issued in a case involving an alcohol related offense; or
- (2) Thirty-nine days from the date the notice of administrative revocation was issued in a case involving a drug related offense.

The director may continue the hearing only as provided in subsection ~~[(k)-]~~ (j).

(b) The hearing shall be held at a place designated by the director, as close to the location where the notice of administrative revocation was issued as practical.

(c) The respondent may be represented by counsel and, if the respondent is under the age of eighteen, must be accompanied by a parent or guardian.

(d) The director shall conduct the hearing and have authority to:

- (1) Administer oaths and affirmations;
- (2) Examine witnesses and take testimony;
- (3) Receive and determine the relevance of evidence;
- (4) Issue subpoenas;
- (5) Regulate the course and conduct of the hearing;
- (6) Impose up to the maximum license revocation period as specified under section ~~[291E-41(b);]~~ 291E-41(b)(4); and
- (7) Make a final ruling.

(e) The director shall affirm the administrative revocation only if the director determines that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed:
 - (i) That the person may refuse to submit to testing in compliance with section 291E-11; and
 - (ii) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test in compliance with the requirements of section 291E-15.

~~[(f) In addition to subsection (e), the director shall affirm the administrative revocation of the registration of any motor vehicle owned by or registered to the respondent only if the director determines that the respondent is a repeat intoxicated driver. If the director affirms the administrative revocation pursuant to this subsection, the director shall order the respondent to surrender the number plates and motor vehicle registration of any motor vehicle owned by or registered to the respondent. The director may destroy any number plates taken into custody.~~

~~(g)~~ (f) The respondent's prior alcohol and drug enforcement contacts shall be entered into evidence.

~~[(h)]~~ (g) The sworn statements provided in section 291E-36 shall be admitted into evidence. The director shall consider the sworn statements in the absence of the law enforcement officer or other person. Upon written notice to the director, no later than five days prior to the hearing, that the respondent wishes to examine a law enforcement officer or other person who made a sworn statement, the director shall issue a subpoena for the officer or other person to appear

at the hearing. Personal service upon the law enforcement officer or other person who made a sworn statement shall be made no later than forty-eight hours prior to the hearing time. If the officer or other person cannot appear, the officer or other person at the discretion of the director, may testify by telephone.

~~[(i)]~~ (h) The hearing shall be recorded in a manner to be determined by the director.

~~[(j)]~~ (i) The director's decision shall be rendered in writing and mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than five days after the hearing is concluded. If the decision is to reverse the administrative revocation, the director shall return the respondent's license, ~~[and if applicable, motor vehicle registration and any number plates taken into custody,]~~ along with a certified statement that administrative revocation proceedings have been terminated. If the decision sustains the administrative revocation, the director shall mail to the respondent a written decision indicating the duration of the administrative revocation and any other conditions or restrictions as may be imposed pursuant to section 291E-41.

~~[(k)]~~ (j) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director, the director shall extend the validity of the temporary permit, ~~[and temporary motor vehicle registration and temporary number plates if applicable,]~~ unless otherwise prohibited, for a period not to exceed the period of the continuance. If a continuance is granted at the request of the respondent, the director shall not extend the validity of the temporary permit~~[- or temporary motor vehicle registration and temporary number plates, if applicable].~~ For purposes of this section, a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced, other than for recesses during the day or at the end of the day or week. The absence from the hearing of a law enforcement officer or other person, upon whom personal service of a subpoena has been made as set forth in subsection ~~[(h),]~~ (g), constitutes good cause for a continuance.

~~[(h)]~~ (k) The director may grant a special motor vehicle registration, pursuant to section 291E-48, to a qualified household member or a co-owner of any motor vehicle upon determination that:

- (1) The person is completely dependent on the motor vehicle for the necessities of life; and
- (2) At the time of the application for a special motor vehicle registration, the respondent does not have a valid ignition interlock permit.

The special motor vehicle registration shall not be valid for use by the respondent.

~~[(m)]~~ (l) If the respondent fails to appear at the hearing, or if a respondent under the age of eighteen fails to appear with a parent or guardian, administrative revocation shall take effect for the period and under the conditions established by the director in the administrative review decision issued by the director under section 291E-37."

SECTION 16. Section 291E-39, Hawaii Revised Statutes, is amended to read as follows:

"§291E-39 Fees and costs. The director may assess and collect a \$30 fee from the respondent to cover the costs of processing the respondent's request for an administrative hearing. These costs include but shall not be limited to: the cost of photocopying documents; conditional license permits, temporary permits, ~~[temporary motor vehicle registrations, temporary number plates,]~~ and

relicensing forms; interpreter services; and other similar costs; provided that the costs of issuing subpoenas for witnesses, including mileage fees, shall be borne by the party requesting the subpoena. The director may waive the fee in the case of an indigent respondent, upon an appropriate inquiry into the financial circumstances of the respondent seeking the waiver and an affidavit or a certificate signed by the respondent demonstrating the respondent's financial inability to pay the fee."

SECTION 17. Section 291E-41, Hawaii Revised Statutes, is amended to read as follows:

"§291E-41 Effective date, conditions, and period of administrative revocation; criteria. (a) Unless an administrative revocation is reversed or the temporary permit~~[-and temporary motor vehicle registration and temporary number plates, if applicable, are]~~ is extended by the director, administrative revocation shall become effective on the day specified in the notice of administrative revocation. Except as provided in section 291E-44.5, no license and privilege to operate a vehicle shall be restored under any circumstances during the administrative revocation period. Upon completion of the administrative revocation period, the respondent may reapply and be reissued a license pursuant to section 291E-45.

(b) Except as provided in paragraph (5) and in section 291E-44.5, the respondent shall keep an ignition interlock device installed and operating in any vehicle the respondent operates during the revocation period. Except as provided in section 291E-5, installation and maintenance of the ignition interlock device shall be at the respondent's ~~[own]~~ expense. The periods of administrative revocation, with respect to a license and privilege to operate a vehicle, ~~[and motor vehicle registration if applicable,]~~ that shall be imposed under this part are as follows:

- (1) A one year revocation of license and privilege to operate a vehicle, if the respondent's record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (2) An eighteen month revocation of license and privilege to operate a vehicle ~~[and of the registration of any motor vehicle registered to the respondent]~~, if the respondent's record shows one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (3) A two-year revocation of license and privilege to operate a vehicle ~~[and of the registration of any motor vehicle registered to the respondent]~~, if the respondent's record shows two prior alcohol enforcement contacts or drug enforcement contacts during the five years preceding the date the notice of administrative revocation was issued;
- (4) A minimum of five years up to a maximum of ten years revocation of license and privilege to operate a vehicle ~~[and of the registration of any motor vehicle registered to the respondent]~~, if the respondent's record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued;
- (5) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61 or 291E-61.5, revocation of license and privilege to operate a vehicle for the appropriate revoca-

tion period provided in paragraphs (1) to (4) or in subsection [(d); (c)]; provided that the respondent shall be prohibited from driving during the period preceding the respondent's eighteenth birthday and shall thereafter be subject to the ignition interlock requirement of this subsection for the balance of the revocation period; or

- (6) For respondents, other than those excepted pursuant to section ~~[[291E-44.5(b)];~~ 291E-44.5(c), who do not install an ignition interlock device in any vehicle the respondent operates during the revocation period, revocation of license and privilege to operate a vehicle for the period of revocation provided in paragraphs (1) to (5) or in subsection ~~[[d)];~~ (c); provided that:

(A) The respondent shall be absolutely prohibited from driving during the revocation period and subject to the penalties provided by section 291E-62 if the respondent drives during the revocation period; and

(B) The director shall not issue an ignition interlock permit to the respondent pursuant to section 291E-44.5;

provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later.

~~[(e) Whenever a motor vehicle registration is revoked under this part, the director shall cause the revocation to be entered electronically into the motor vehicle registration file of the respondent.~~

~~(d)~~ (c) If a respondent has refused to be tested after being informed:

- (1) That the person may refuse to submit to testing in compliance with section 291E-11; and
- (2) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15,

the revocation imposed under subsection (b)(1), (2), (3), or (4) shall be for a period of two years, three years, four years, ~~and~~ or ten years, respectively.

~~[(e)]~~ (d) Whenever a license and privilege to operate a vehicle is administratively revoked under this part, the respondent shall be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the respondent's substance abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the respondent's substance abuse or dependence warrants treatment, the director shall so order. All costs for assessment and treatment shall be paid by the respondent.

~~[(f)]~~ (e) Alcohol and drug enforcement contacts that occurred prior to January 1, 2002, shall be counted in determining the administrative revocation period.

~~[(g)]~~ (f) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a revocation under subsection (b)(1)."

SECTION 18. Section 291E-44.5, Hawaii Revised Statutes, is amended to read as follows:

"§291E-44.5 Ignition interlock permits; driving for employment. (a) ~~[(1)]~~ Except as provided in ~~[paragraph (2)];~~ subsection (b), upon proof that the respondent has installed an ignition interlock device in ~~[the respondent's vehicle];~~ any vehicle the respondent operates and obtained motor vehicle insurance

or self-insurance that complies with the requirements of section 431:10C-104 or 431:10C-105, the director shall issue an ignition interlock permit that will allow the respondent to drive a vehicle equipped with an ignition interlock device during the revocation period[; or].

[(2) Notwithstanding any other law to the contrary,] (b) Except as provided in sections 286-A and 291E-B, the director shall not issue an ignition interlock permit to:

- [(A)] (1) A respondent whose license is expired, suspended, or revoked as a result of action other than the instant revocation;
- [(B)] (2) A respondent who does not hold a valid license at the time of arrest for the violation of section 291E-61; [or]
- (3) A respondent who holds a license that is a learner's permit or instruction permit; or
- [(C)] (4) A respondent who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b) unless the ignition interlock permit is restricted to a category 1, 2, or 3 license under section 286-102(b).

[(b)(1)] (c) Except as provided in subsection [(a)(2);] (b), the director may issue a separate permit authorizing a respondent to operate a vehicle owned by the respondent's employer during the period of revocation without installation of an ignition interlock device if the respondent is gainfully employed in a position that requires driving and the respondent will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device.

[(2)] (d) A request made pursuant to [paragraph (1)] subsection (c) shall be accompanied by:

- [(A)] (1) A sworn statement from the respondent containing facts establishing that the respondent currently is employed in a position that requires driving and that the respondent will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and
- [(B)] (2) A sworn statement from the respondent's employer establishing that the employer will, in fact, discharge the respondent if the respondent is prohibited from driving a vehicle not equipped with an ignition interlock device and identifying the specific vehicle or vehicles and hours of the day the respondent will drive, not to exceed twelve hours per day, for purposes of employment.

[(e)] (e) A permit issued pursuant to subsection [(b)] (c) shall include restrictions allowing the respondent to drive:

- (1) Only during specified hours of employment, not to exceed twelve hours per day, and only for activities solely within the scope of the employment;
- (2) Only the [vehicle] vehicles specified; and
- (3) Only if the permit is kept in the respondent's possession while operating the employer's vehicle.

In addition, the director may impose other appropriate restrictions."

SECTION 19. Section 291E-46, Hawaii Revised Statutes, is amended to read as follows:

"[§291E-46]] Computation of time. The time in which any act provided in this part is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or state holiday, and then it also is excluded[-]; provided that if the last day for the mailing of decisions under sections 291E-37(a) and 291E-38(i) is a federal holiday, it also is excluded."

SECTION 20. Section 291E-48, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Anytime after the effective date of revocation or after the administrative hearing decision is mailed pursuant to section ~~[291E-38(i)]~~, 291E-38(i), a qualified household member or co-owner of a motor vehicle with a respondent who has had a motor vehicle registration revoked under this part may submit a sworn statement to the director requesting a special motor vehicle registration. The director may grant the request upon determining that the following conditions have been met:

- (1) The applicant is a household member of the respondent's or a co-owner of the vehicle;
- (2) The applicant has a license that has not expired or been suspended or revoked;
- (3) The applicant is completely dependent on the motor vehicle for the necessities of life;
- (4) The director finds that the applicant will take reasonable precautions to ensure that the respondent will not drive the vehicle; and
- (5) The respondent does not have a valid ignition interlock permit.

A person to whom a special motor vehicle registration has been granted shall apply to the director of the appropriate county agency for special series number plates, as provided in section 249-9.4.”

SECTION 21. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) ~~[Notwithstanding any other law to the contrary,]~~ Except as provided in sections 286-A and 291E-B, the court shall not issue an ignition interlock permit to:

- (1) A defendant whose license is expired, suspended, or revoked as a result of action other than the instant offense;
- (2) A defendant who does not hold a valid license at the time of the instant offense; ~~[or]~~
- (3) A defendant who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b), unless the ignition interlock permit is restricted to a category 1, 2, or 3 license under section 286-102(b) ~~[-]; or~~
- (4) A defendant who holds a license that is a learner's permit or instruction permit.”

SECTION 22. Section 291E-68, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§291E-68]]~~ **Refusal to submit to a breath, blood, or urine test; penalty.** ~~[Refusal]~~ Except as provided in section 291E-65, refusal to submit to a breath, blood, or urine test as required by part II is a petty misdemeanor.”

SECTION 23. In codifying the new sections added by sections 2, 3, and 4 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 24. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 25. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 26. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 27. This Act shall take effect on July 1, 2012.

(Became law on July 10, 2012, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 328

H.B. NO. 280

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§708- False labeling of Hawaii-grown coffee. (1) A person commits the offense of false labeling of Hawaii-grown coffee if the person knowingly transports, distributes, advertises, sells, or possesses with the intent to sell Hawaii-grown green coffee, cherry coffee, or parchment coffee that is falsely labeled with regard to the geographic origin of the Hawaii-grown coffee.

(2) For purposes of this section:

“Cherry coffee” means the unprocessed fruit of the coffee plant.

“Geographic origin” means the geographic areas designated as follows:

- (a) Hamakua is the Hamakua district on the island of Hawaii, as designated by the State of Hawaii tax map;
- (b) Hawaii is the State of Hawaii;
- (c) Kau is the Kau district on the island of Hawaii, as designated by the State of Hawaii tax map;
- (d) Kauai is the island of Kauai;
- (e) Kona is the north Kona and south Kona districts on the island of Hawaii, as designated by the State of Hawaii tax map;
- (f) Maui is the island of Maui;
- (g) Molokai is the island of Molokai; and
- (h) Oahu is the island of Oahu.

“Green coffee” means the agricultural commodity comprised of green coffee beans.

“Parchment coffee” means the dried product that remains when coffee cherries are processed by removing the coffee seeds from the pulp.

(3) False labeling of Hawaii-grown coffee is a class C felony.”

SECTION 2. Section 147-2, Hawaii Revised Statutes, is amended to read as follows:

“§147-2 Duties of department; violations; proceedings; penalties. The department shall administer and enforce this part and rules adopted by the department pursuant thereto.

The following penalties, remedies, procedures, and actions shall apply in instances of violations and complaints of violations of this part, or of the rules adopted by the department under the authority of this part:

- (1) Administrative penalty. The department may, after notice and opportunity for hearing, fine any person who violates this part or any rule adopted under this part, not more than \$1,000 for each separate offense. Each day or instance of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this paragraph shall be considered a civil action;
- (2) Nuisance may be enjoined, abated. Violation of this part or of any rule adopted thereunder is declared a public nuisance and may be enjoined or abated as such in a suit filed and prosecuted in the circuit court by the department or the attorney general. The several circuit courts are hereby vested with jurisdiction to prevent and restrain violation of this part or of any rule effective thereunder;
- (3) Misdemeanor. Any person who violates this part or any rule adopted under this part shall be fined not more than \$1,000 or imprisoned not more than one year, or both;
- (4) The penalties and remedies prescribed in this section with respect to any violation mentioned in this section shall be concurrent and alternative and neither singly nor combined shall the same be exclusive and either singly or combined the same shall be cumulative with any and all other civil, criminal, or alternative rights, remedies, or penalties provided or allowed by law with respect to any such violation[-]; and
- (5) Nothing in this section shall prohibit the county police departments and county prosecutors or state law enforcement agencies from investigating and enforcing criminal violations of this chapter.”

SECTION 3. Section 147-4, Hawaii Revised Statutes, is amended to read as follows:

“§147-4 Rules. The department may make rules, subject to chapter 91:

- (1) Defining grades and grade labeling requirements of agricultural commodities and standard containers for packing of particular agricultural commodities;
- (2) Prohibiting the sale, offering for sale, or transportation of agricultural commodities unless packed in standard containers and labeled with the appropriate grade or offgrade designation; provided that this prohibition shall not apply to the sale, offering for sale, or transportation to a plant for grading, packing, or processing, or transportation to a warehouse for storage;
- (3) Prohibiting the use of grade terms or abbreviations of grade terms on agricultural commodities for which no grades have been established under this part;
- (4) Defining “suitable shipping condition” for agricultural commodities which are to be shipped for sale from one island to another within the State or to points outside the State, and prohibiting such shipment for sale of agricultural commodities which do not meet the minimum standards set for “suitable shipping condition”;

- (5) Prescribing records to be kept in connection with purchases of agricultural commodities by persons, other than produce dealers purchasing from a producer or producers, for purposes of resale five or more tons of agricultural commodities during any one calendar month; ~~and~~
- (6) Prescribing records to be kept by produce dealers in connection with the purchase, sale, transport for sale, solicitation, or negotiation of sale with respect to an agricultural commodity~~[-]; and~~
- (7) Relating to the inspection and documentation of the geographic origin of Hawaii-grown green coffee beans.

In making the rules the department shall take into account, among other things, the factors of maturity, condition, soundness, color, shape, size, and freedom from defects of the agricultural commodity in question and shall also take into consideration the official standards, grades or classifications adopted by the secretary of the Department of Agriculture of the United States, commonly known as U.S. Grades."

SECTION 4. Section 147-7, Hawaii Revised Statutes, is amended to read as follows:

"§147-7 Inspection and classification of agricultural commodities; fees.

(a) The department may contract with the United States Department of Agriculture for obtaining the services of a supervising inspector employed by the federal department and the establishment of a cooperative inspection service with the United States government. The department, or the supervising inspector~~[-]~~ with the approval of the department, may designate any competent employee or agent of the department as an inspector to inspect or classify agricultural commodities in accordance with rules of the department, and at the time and places designated by the supervising inspector or the department.

(b) The inspectors shall be authorized to inspect or classify agricultural commodities at the request of persons having a financial interest in the commodities~~[-], or as mandated by subsection (d).]~~ and to ascertain and certify to the persons the grade, classification, quality, condition, or origin of them and other pertinent facts.

(c) The department may fix, assess, and collect or cause to be collected fees for the services when they are performed by employees of the department. The fees shall be on a uniform basis and in an amount reasonably necessary to cover the cost of inspection and the administration of this part; provided that the department may prescribe a reasonable charge for traveling expenses and extraordinary services when the performance of the services involves unusual cost in their performance. No fee shall be charged for an inspection unless the inspection was requested by a person having a financial interest in the inspected commodity ~~[or the inspection was mandated by subsection (d).~~

~~(d) All Hawaii-grown green coffee beans shall be inspected and certified by the department for grade and origin unless otherwise specified by rules of the department].~~

~~[(e)]~~ (d) The department may adopt rules establishing the requirements, procedures, restrictions, and other criteria necessary for establishing a program of self inspection and certification of agricultural commodities."

SECTION 5. Section 147-23, Hawaii Revised Statutes, is amended to read as follows:

“§147-23 Prohibited acts. (a) No commercial exporter shall ship any fresh or processed agricultural commodities to points outside the State unless such products meet the quality, condition, and labeling requirements of the rules adopted under this part.

(b) No Hawaii-grown ~~[green]~~ coffee beans shall be shipped outside the area of their geographic origin to any point within the State or outside the State unless ~~[they have]~~ the coffee bean package containing the beans has been [inspected and certified as required in section 147-7(d) or by rules adopted under section [147-7(e)]. Areas of geographic origin shall be defined by rules of the department.] marked with or contains documentation of geographic origin approved by the department.”

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect upon its approval.

(Became law on July 10, 2012, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 329

S.B. NO. 2341

A Bill for an Act Relating to Land Use.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there are many examples across the country of agricultural tourism incorporated within productive farms and ranches. For example, several sites in Napa valley in northern California are well-known agricultural tourism destinations. Agricultural tourism serves as a means to provide not only additional income for farmers and ranchers but also serves as a learning experience for many people who do not have a connection to agriculture.

The legislature further finds that there are agricultural tourism opportunities in areas such as the Hamakua coast on the island of Hawaii, upcountry Maui, and the north and west sides of Kauai. Additional economic activity in those areas will also benefit neighboring communities. Although the legislature finds that agricultural tourism can be a profitable marketing tool for the agricultural industry, the legislature recognizes that each county may have differing priorities regarding land use, particularly regarding permissible uses on agricul-

tural lands. The intent of this Act is to enable the counties to make their own determinations regarding the allowance of certain activities on, or uses of, land in agricultural districts.

The purpose of this Act is to allow agricultural tourism activities, including certain overnight accommodations of twenty-one days or less, in agricultural districts for any one stay within a county; provided that the county includes at least three islands and has adopted an ordinance specifically allowing for such activity.

SECTION 2. Section 141-9, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“[§141-9] Energy feedstock program. (a) There is established within the department of agriculture an energy feedstock program that shall:

- (1) Maintain cognizance of actions taken by industry and by federal, state, county, and private agencies in activities relating to the production of energy feedstock, and promote and support worthwhile energy feedstock production activities in the State;
- (2) Serve as an information clearinghouse for energy feedstock production activities;
- (3) Coordinate development projects to investigate and solve biological and technical problems involved in raising selected species with commercial energy generating potential;
- (4) Actively seek federal funding for energy feedstock production activities;
- (5) Undertake activities required to develop and expand the energy feedstock production industry; and
- (6) Perform other functions and activities as may be assigned by law, including monitoring the compliance provisions under section [205-4.5(a)(15)] 205-4.5(a)(16).”

SECTION 3. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Agricultural districts shall include:

- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry and game and fish propagation;
- (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
- (4) Wind generated energy production for public, private, and commercial use;
- (5) Biofuel production, as described in section [205-4.5(a)(15)] 205-4.5(a)(16), for public, private, and commercial use;
- (6) Solar energy facilities; provided that:
 - (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and
 - (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser;
- (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and acces-

sory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, agricultural-energy facilities as defined in section [205-4.5(a)(16);] 205-4.5(a)(17), vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a)(12);

- (8) Wind machines and wind farms;
- (9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
- (10) Agricultural parks;
- (11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; [and]
- (12) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2; and
- [(12)] (13) Open area recreational facilities.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics."

SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks devel-

- oped by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
 - (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
 - (7) Public, private, and quasi-public utility lines and roadways, transfer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
 - (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
 - (9) Roadside stands for the sale of agricultural products grown on the premises;
 - (10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);
 - (11) Agricultural parks;
 - (12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:
 - (A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;
 - (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or
 - (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;
 - (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
 - (14) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided

further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2:

- [(14)] (15) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;
- [(15)] (16) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuels processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

"Appurtenances" means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuels processing facilities.

"Biofuel processing facility" means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

- [(16)] (17) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

"Agricultural activity" means any activity described in paragraphs (1) to (3) of this subsection.

"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

"Appurtenances" means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

- [(17)] (18) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding or placed upon or attached to an already exist-

ing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection;

- [(18)] (19) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, "agricultural education programs" means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2; or
- [(19)] (20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser; provided that this use shall not be permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A."

SECTION 5. Section 205-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm, or farming operation as defined in section 165-2; ~~provided that agricultural tourism activities shall not be permissible in the absence of a bona fide farming operation~~. Ordinances shall include but not be limited to:

- (1) Requirements for access to a farm, including road width, road surface, and parking;
- (2) Requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants; ~~[provided that overnight accommodations shall not be permitted;]~~
- (3) Activities that may be offered by the farming operation for visitors;
- (4) Days and hours of operation; and
- (5) Automatic termination of the accessory use upon the cessation of the farming operation.

Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity. Other uses may be allowed by special permits issued pursuant to this chapter. The minimum lot size in agricultural districts shall be determined by each county by zoning ordinance, subdivision ordinance, or other lawful means; provided that the minimum lot size for any agricultural use shall not be less than one acre, except as provided herein. If the county finds that unreasonable economic hardship to the owner or lessee of land cannot otherwise be prevented or where land utilization is improved, the county may allow lot sizes of less than the minimum lot size as specified by law for lots created by a consolidation of existing lots within an agricultural district and the resubdivision thereof; provided that the consolidation and resubdivision

do not result in an increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot which is equal to or exceeds the minimum lot size of one acre be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for plantation community subdivisions as defined in section 205-4.5(a)(12), for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Became law on July 10, 2012, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

PROPOSED CONSTITUTIONAL AMENDMENTS

H.B. NO. 2594

A Bill for an Act Proposing an Amendment to Article VII, Section 12, of the Hawaii State Constitution to Assist Dam and Reservoir Owners.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to article VII, section 12, of the Hawaii State Constitution, to authorize the State to issue special purpose revenue bonds and use the proceeds from the bonds to assist dam and reservoir owners.

SECTION 2. Article VII, section 12, of the Constitution of the State of Hawaii is amended to read as follows:

"DEFINITIONS; ISSUANCE OF INDEBTEDNESS

Section 12. For the purposes of this article:

1. The term "bonds" shall include bonds, notes and other instruments of indebtedness.

2. The term "general obligation bonds" means all bonds for the payment of the principal and interest of which the full faith and credit of the State or a political subdivision are pledged and, unless otherwise indicated, includes reimbursable general obligation bonds.

3. The term "net revenues" or "net user tax receipts" means the revenues or receipts derived from:

a. A public undertaking, improvement or system remaining after the costs of operation, maintenance and repair of the public undertaking, improvement or system, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made; or

b. Any payments or return on security under a loan program or a loan thereunder, after the costs of operation and administration of the loan program, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made.

4. The term "owner" means any person who has a right, title or interest in or to a dam or reservoir or to the property upon which a dam, reservoir or appurtenant work is located or proposed to be located.

[4.] 5. The term "person" means an individual, firm, partnership, corporation, association, cooperative or other legal entity, governmental body or agency, board, bureau or other instrumentality thereof, or any combination of the foregoing.

[5.] 6. The term "rates, rentals and charges" means all revenues and other moneys derived from the operation or lease of a public undertaking, improvement or system, or derived from any payments or return on security under a loan program or a loan thereunder; provided that insurance premium payments, assessments and surcharges, shall constitute rates, rentals and charges of a state property insurance program.

[6.] 7. The term "reimbursable general obligation bonds" means general obligation bonds issued for a public undertaking, improvement or system from which revenues, or user taxes, or a combination of both, may be derived for the payment of the principal and interest as reimbursement to the general fund and for which reimbursement is required by law, and, in the case of general obli-

PROPOSED CONSTITUTIONAL AMENDMENTS

gation bonds issued by the State for a political subdivision, general obligation bonds for which the payment of the principal and interest as reimbursement to the general fund is required by law to be made from the revenue of the political subdivision.

[7-] 8. The term "revenue bonds" means all bonds payable from the revenues, or user taxes, or any combination of both, of a public undertaking, improvement, system or loan program and any loan made thereunder and secured as may be provided by law, including a loan program to provide loans to a state property insurance program providing hurricane insurance coverage to the general public.

[8-] 9. The term "special purpose revenue bonds" means all bonds payable from rental or other payments made to an issuer by a person pursuant to contract and secured as may be provided by law.

[9-] 10. The term "user tax" means a tax on goods or services or on the consumption thereof, the receipts of which are substantially derived from the consumption, use or sale of goods and services in the utilization of the functions or services furnished by a public undertaking, improvement or system; provided that mortgage recording taxes shall constitute user taxes of a state property insurance program.

The legislature, by a majority vote of the members to which each house is entitled, shall authorize the issuance of all general obligation bonds, bonds issued under special improvement statutes and revenue bonds issued by or on behalf of the State and shall prescribe by general law the manner and procedure for such issuance. The legislature by general law shall authorize political subdivisions to issue general obligation bonds, bonds issued under special improvement statutes and revenue bonds and shall prescribe the manner and procedure for such issuance. All such bonds issued by or on behalf of a political subdivision shall be authorized by the governing body of such political subdivision.

Special purpose revenue bonds shall only be authorized or issued to finance facilities of or for, or to loan the proceeds of such bonds to assist:

1. Manufacturing, processing[,] or industrial enterprises;
2. Utilities serving the general public;
3. Health care facilities provided to the general public by not-for-profit corporations;
4. Early childhood education and care facilities provided to the general public by not-for-profit corporations;
5. Low and moderate income government housing programs;
6. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities; [or]
7. Agricultural enterprises serving important agricultural lands[]; or
8. Dam and reservoir owners,

each of which is hereinafter referred to in this paragraph as a special purpose entity.

The legislature, by a two-thirds vote of the members to which each house is entitled, may enact enabling legislation for the issuance of special purpose revenue bonds separately for each special purpose entity, and, by a two-thirds vote of the members to which each house is entitled and by separate legislative bill, may authorize the State to issue special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the legislature; and provided further that the State may combine into a single issue of special purpose revenue bonds two or more proposed issues of special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges[,] and universi-

PROPOSED CONSTITUTIONAL AMENDMENTS

ties, and dam and reservoir owners, separately authorized as aforesaid, in the total amount [of] not exceeding the aggregate of the proposed separate issues of special purpose revenue bonds. The legislature may enact enabling legislation to authorize political subdivisions to issue special purpose revenue bonds. If so authorized, a political subdivision by a two-thirds vote of the members to which its governing body is entitled and by separate ordinance may authorize the issuance of special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the governing body of the political subdivision. No special purpose revenue bonds shall be secured directly or indirectly by the general credit of the issuer or by any revenues or taxes of the issuer other than receipts derived from payments by a person or persons under contract or from any security for such contract or contracts or special purpose revenue bonds and no moneys other than such receipts shall be applied to the payment thereof. The governor shall provide the legislature in November of each year with a report on the cumulative amount of all special purpose revenue bonds authorized and issued, and such other information as may be necessary."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the State be authorized to issue special purpose revenue bonds and use the proceeds from the bonds to assist dam and reservoir owners to make their facilities compliant with current safety standards?"

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

S.B. NO. 650

A Bill for an Act Proposing an Amendment to Article VI, Section 3, of the Constitution of the State of Hawaii Authorizing the Chief Justice of the State Supreme Court to Appoint Retired Judges to Serve as Emeritus Judges.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to article VI, section 3, of the Constitution of the State of Hawaii to authorize the chief justice of the supreme court to appoint judges who have retired upon attaining the age of seventy years as emeritus judges, permitting them to serve as temporary judges in courts no higher than the court level they reached prior to retirement and for terms not to exceed three months.

SECTION 2. Article VI, section 3, of the Constitution of the State of Hawaii is amended to read as follows:

"APPOINTMENT OF JUSTICES AND JUDGES

Section 3. The governor, with the consent of the senate, shall fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than four,

PROPOSED CONSTITUTIONAL AMENDMENTS

and not more than six, nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor fails to make any appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. If the senate fails to reject any appointment within thirty days thereof, it shall be deemed to have given its consent to such appointment. If the senate shall reject any appointment, the governor shall make another appointment from the list within ten days thereof. The same appointment and consent procedure shall be followed until a valid appointment has been made, or failing this, the commission shall make the appointment from the list, without senate consent.

The chief justice, with the consent of the senate, shall fill a vacancy in the district courts by appointing a person from a list of not less than six nominees for the vacancy presented by the judicial selection commission. If the chief justice fails to make the appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. The senate shall hold a public hearing and vote on each appointment within thirty days of any appointment. If the senate fails to do so, the nomination shall be returned to the commission and the commission shall make the appointment from the list without senate consent. The chief justice shall appoint per diem district court judges as provided by law.

The chief justice may appoint judges who have retired upon attaining the age of seventy years as emeritus judges, permitting the appointed judges to serve as temporary judges in courts no higher than the court level they reached prior to retirement and for terms not to exceed three months per each appointment.

QUALIFICATIONS FOR APPOINTMENT

Justices and judges shall be residents and citizens of the State and of the United States, and licensed to practice law by the supreme court. A justice of the supreme court, a judge of the intermediate appellate court and a judge of the circuit court shall have been so licensed for a period of not less than ten years preceding nomination. A judge of the district court shall have been so licensed for a period of not less than five years preceding nomination.

No justice or judge shall, during the term of office, engage in the practice of law, or run for or hold any other office or position of profit under the United States, the State or its political subdivisions.

TENURE; RETIREMENT

The term of office of justices and judges of the supreme court, intermediate appellate court and circuit courts shall be ten years. Judges of district courts shall hold office for the periods as provided by law. At least six months prior to the expiration of a justice's or judge's term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of an intention to retire. If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew the term of office of the justice or judge for the period provided by this section or by law.

Justices and judges shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the State."

PROPOSED CONSTITUTIONAL AMENDMENTS

SECTION 3. The question to be printed on the ballot shall be as follows:

“Shall the chief justice of the state supreme court appoint judges who have retired upon attaining the age of seventy years as emeritus judges, permitting the appointed judges to serve as temporary judges in courts no higher than the court level they reached prior to retirement and for terms not to exceed three months per each appointment?”

SECTION 4. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

COMMITTEE REPORTS ON BILLS ENACTED

TABLES SHOWING EFFECT OF ACTS

GENERAL INDEX

COMMITTEE REPORTS ON BILLS ENACTED

REGULAR SESSION OF 2012

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
HB0238	206	844, 2063	393, 651	
HB0246	322	2069, 3345	577, 857	140-12
HB0280	328 ¹	2979, 3239	295-12, 585-12, 755-12	114-12
HB0297	295	2344, 3277	304, 850	
HB0302	303	2338, 3278	307, 858	
HB0304	215	3205	727-12	153-12
HB0425	099	2949, 3169	35-12, 214-12, 713-12	
HB0461	226	2450	225, 575, 764	
HB0608	001	859, 1100	126, 368, 894	1-12 ²
HB0609	281	2896, 3342	120-12, 424-12, 826-12	116-12
HB0626	207	3143	533-12, 854-12	
HB0679	301	3195	605-12, 916-12	41-12
HB0755	160	2934, 3231	121, 452-12, 785-12	
HB0905	004	1119	292, 897	4-12
HB0994	032	2984, 3164	1-12, 667-12	
HB1054	308	3142	21, 875	65-12
HB1181	294	2970, 3304	717-12	
HB1295	244	3006, 3348	121-12, 563-12, 693-12	59-12
HB1398	164	2990, 3245	383-12, 786-12	42-12
HB1524	125	2289, 3322	119, 936	
HB1543	246	3128	612	34-12
HB1666	316	3185	126-12, 799-12	33-12
HB1695	185	3036	375-12, 857-12	
HB1698	044	2848, 3270	10-12, 882-12	
HB1705	184	3174	723-12	58-12
HB1726	151	2950, 3235	18-12, 905-12	147-12
HB1743	010	2838	16-12, 246-12	
HB1744	048	3191	9-12, 955-12	
HB1746	018	3093	264-12, 666-12	
HB1754	100	2886	11-12, 767-12	
HB1755	225	2883, 3347	449-12, 773-12	141-12
HB1764	115	3192	28-12, 455-12	
HB1765	299	2847, 3226	54-12, 534-12, 807-12	
HB1772	059	3199	664-12	
HB1777	325	3196	634-12, 769-12	
HB1788	293	2924, 3230	676-12	36-12
HB1791	292	2932, 3229	320-12, 731-12	44-12
HB1800	107	3007, 3236	573-12, 964-12	132-12
HB1838	108	3175	715-12	133-12
HB1858	016	3026	30-12, 808-12	
HB1868	074 ¹	2923, 3165	59-12	
HB1874	064	2961, 3335	606-12, 746-12	
HB1875	182	2945, 3325	626-12, 852-12	63-12
HB1879	196	3141	105-12, 846-12	111-12
HB1892	223	2884, 3220	116-12, 770-12	61-12
HB1925	302	3129	21-12, 732-12	29-12
HB1942	127	2926, 3247	292-12, 752-12	136-12
HB1943	128	2928, 3248	586-12, 753-12	137-12
HB1953	268	2897, 3291	152-12, 795-12	139-12
HB1957	315	2901, 3233	47-12, 735-12	28-12
HB1964	030	2900, 3151	422-12, 733-12	
HB1965	024	3138	74-12, 665-12	
HB1967	296	2899, 3168	50-12, 579-12, 820-12	
HB1968	233	2863, 3255	337-12, 927-12	170-12

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
HB1972	150	3004, 3333	618-12, 790-12	113-12
HB1974	307	2865, 3336	446-12, 925-12	123-12
HB2002	005	2098	5-12	
HB2004	203	2916, 3353	318-12, 757-12	47-12
HB2012	106	3208	965-12	131-12
HB2013	102	2942, 3170	200-12, 711-12	
HB2023	053	2852, 3256	153-12, 441-12, 821-12	
HB2030	318	2834	245-12, 911-12	
HB2078	326 ¹	2982, 3167	310-12, 805-12	64-12
HB2096	006	2810	210-12, 298-12	
HB2099	234	2935, 3274	137-12, 628-12, 809-12	50-12
HB2100	129	2875, 3262	114-12, 442-12, 750-12	138-12
HB2113	319	2971, 3306	604-12, 708-12	
HB2127	154	2867, 3358	306-12, 778-12	
HB2133	073	3180	342-12	
HB2143	019	3032	385-12, 784-12	
HB2150	167	2930, 3316	437-12, 691-12	
HB2162	033	2853, 3149	627-12, 847-12	
HB2169	324	3061	97-12, 557-12, 921-12	
HB2175	208	3200	583-12, 797-12	46-12
HB2179	300	2880, 3271	581-12, 904-12	
HB2181	026	2955, 3150	132-12, 535-12, 896-12	
HB2226	190	2864, 3237	271-12, 631-12, 736-12	171-12
HB2232	136	2967, 3225	357-12, 699-12	37-12
HB2242	306	3140	104-12, 848-12	
HB2244	124	2999, 3250	339-12, 756-12	40-12
HB2248	305	2868, 3311	211-12, 788-12	117-12
HB2251	104	2939, 3275	173-12, 772-12	142-12
HB2254	045	2909, 3221	544-12, 810-12	
HB2257	247	3171	177-12, 519-12, 926-12	
HB2258	248	3136	178-12, 518-12, 737-12	
HB2264	263	3005, 3337	92-12, 953-12	
HB2265	173	2963, 3349	26-12, 838-12	62-12
HB2266	224	3173	98-12, 833-12	
HB2273	197	2869, 3263	51-12, 301-12, 931-12	
HB2275	217	2966, 3343	148-12, 932-12	125-12
HB2290	221	2891, 3327	494-12, 879-12	55-12
HB2295	192	2941, 3232	677-12	
HB2296	126	3145	680-12	
HB2302	159	3002, 3219	100-12, 787-12	148-12
HB2314	243	2983, 3298	447-12, 804-12	
HB2319	170	2859, 3259	431-12, 832-12	145-12
HB2320	327 ¹	2978, 3355	71-12, 650-12, 934-12	56-12
HB2326	181	3203	480-12, 908-12	51-12
HB2328	220	3202	724-12	54-12
HB2347	231	2843, 3307	726-12	49-12
HB2374	201	2976, 3288	359-12, 933-12	
HB2375	183	2855, 3253	363-12, 845-12	
HB2398	282	3206	619-12, 873-12	
HB2409	249	2842, 3163	179-12, 516-12, 747-12	
HB2410	065	2846, 3309	223-12, 738-12	
HB2415	200	2959, 3313	501-12, 930-12	151-12
HB2429	123	2931	658-12	
HB2437	007	2521	172-12, 297-12	
HB2438	008	2520	203-12, 296-12	
HB2439	036	2878, 3284	373-12, 814-12	
HB2441	035	3190	416-12, 700-12	

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
HB2448	211	3001, 3314	206-12, 635-12, 880-12	150-12
HB2454	210	3181	539-12, 775-12	
HB2458	037	3189	662-12	
HB2476	116	2912, 3285	237-12, 859-12	121-12
HB2487	153	3008, 3286	548-12, 885-12	115-12
HB2491	304	2879, 3287	329-12, 811-12	
HB2492	038	2985, 3280	332-12, 812-12	
HB2495	109	2937, 3282	547-12, 884-12	119-12
HB2502	245	2840, 3252	458-12, 945-12	52-12
HB2508	052	2836, 3222	106-12, 850-12	
HB2513	134	2871, 3264	308-12, 779-12	48-12
HB2515	140	2973, 3352	273-12, 652-12, 929-12	130-12
HB2526	259	2944, 3332	399-12, 851-12	
HB2529	174	2953, 3293	134-12, 898-12	
HB2533	028	2872, 3148	495-12, 703-12	
HB2537	091 ¹	3179	417-12, 698-12	
HB2539	041	2889, 3224	160-12, 450-12, 939-12	
HB2540	161	2890, 3218	418-12, 875-12	149-12
HB2547	040	2839, 3326	553-12, 881-12	
HB2553	277	2898, 3289	555-12, 937-12	
HB2564	265	2895, 3319	218-12, 707-12	
HB2568	285	3029	113-12, 451-12, 830-12	38-12
HB2569	267	3193	514-12, 957-12	120-12
HB2573	014	2887	253-12, 886-12	
HB2574	261	2885, 3283	574-12, 860-12	
HB2576	013	2888	209-12, 614-12, 816-12	
HB2578	039	2881, 3338	175-12, 496-12, 813-12	
HB2584	262	2918	136-12, 629-12, 887-12	
HB2587	027	3146	42-12, 696-12	
HB2589	146	2947, 3356	67-12, 648-12, 871-12	43-12
HB2591	056	2946, 3312	240-12, 701-12	
HB2593	149	2948	471-12, 914-12	31-12
HB2595	147	2993, 3303	190-12, 866-12	27-12
HB2598	051	3187	607-12, 749-12	
HB2599	141	3177	603-12, 748-12	172-12
HB2600	029	3028	226-12, 640-12, 739-12	
HB2601	142	3176	269-12, 532-12, 740-12	
HB2602	050	3188	528-12, 766-12	
HB2605	179	3035	720-12	
HB2608	314	2841, 3234	56-12, 599-12, 763-12	
HB2623	209	3201	675-12	35-12
HB2626	317	2866, 3339	465-12, 759-12	118-12
HB2628	043	3137	99-12, 443-12, 913-12	
HB2639	012	2893	180-12, 541-12, 741-12	
HB2644	232	2850, 3254	170-12, 947-12	60-12
HB2656	278	2969, 3243	407-12, 889-12	
HB2664	279	2903, 3290	219-12, 829-12	124-12
HB2681	148	3182	181-12, 743-12	
HB2682	289	2992, 3260	476-12, 872-12	
HB2684	320	2858, 3294	403-12, 760-12	134-12
HB2686	291	3147	730-12	30-12
HB2740	188	2951, 3266	317-12, 714-12	57-12
HB2751	204	2998, 3223	582-12, 959-12	
HB2769	009	2845	663-12	
HB2776	266	2968, 3244	146-12, 803-12	39-12
HB2806	288	2952, 3344	247-12, 899-12	144-12
HB2841	017	3027	530-12, 861-12	

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
HB2848	117	2954, 3242	268-12, 593-12, 745-12	122-12
HB2871	194	2861, 3357	477-12, 869-12	53-12
HB2873	169	2902, 3305	615-12, 843-12	146-12
HB2883	283	2996, 3240	392-12, 864-12	143-12
SB0112	101	432, 712	1070, 1489	164-12
SB0155	198	249, 632	1045, 1578	70-12
SB0223	205	2539	1204-12, 1503-12	
SB0239	002	324, 722	985, 1189, 1541	2-12
SB0240	186	323, 721	1170, 1514	85-12
SB0243	137	185, 638	1061, 1590	83-12
SB0490	171	2073, 2250, 2598	983-12, 1642-12	167-12
SB0596	187	253, 648	1165, 1542	100-12
SB0745	155	129, 754	1140, 1645-12	
SB0809	003	51, 784	1064, 1486	3-12
SB0824	298	9, 608	1112, 1535-12	5-12
SB1083	112	67, 455	962, 1604	101-12
SB1269	152	419, 684	1211, 1599	107-12
SB1276	254	286, 748	1009, 1686-12	16-12
SB1312	082	2557	1529-12	
SB1382	132	377, 652	1187, 1484	81-12
SB1500	270	2560	1186-12, 1506-12	20-12
SB2001	193	2519	1001-12, 1256-12, 1651-12	74-12
SB2009	080	2513	1233-12, 1497-12	
SB2013	081	2424	1241-12, 1500-12	
SB2056	143	2488	1028-12, 1668-12	73-12
SB2084	092	2183, 2502	1043-12, 1213-12, 1550-12	
SB2103	255	2257, 2499	1131-12, 1556-12	66-12
SB2110	090	2113, 2603	1027-12, 1680-12	
SB2115	130	2375, 2750	1239-12, 1690-12	86-12
SB2116	131	2355, 2699	1235-12, 1659-12	154-12
SB2126	093	2258, 2653	1244-12, 1626-12	
SB2167	079	2481	1096-12, 1496-12	
SB2220	103	2007, 2662	1153-12, 1581-12	168-12
SB2221	212	2276, 2463	1163-12, 1446-12	24-12
SB2222	213	2164, 2566	1164-12, 1412-12	25-12
SB2224	067	2171, 2728	1041-12, 1570-12	
SB2228	119	2357, 2500	1051-12, 1558-12	
SB2229	042	2311, 2564	1188-12, 1508-12	
SB2236	242	2531	1127-12, 1670-12	178-12
SB2238	219	2088, 2605	1228-12, 1647-12	89-12
SB2239	240	2116, 2606	1080-12, 1182-12, 1585-12	127-12
SB2247	094	2005, 2676	1411-12	
SB2261	264	2061, 2727	1064-12, 1269-12, 1561-12	163-12
SB2277	145	2298, 2682	997-12, 1270-12, 1592-12	79-12
SB2281	172	2154, 2544	1284-12, 1638-12	
SB2318	236	2082, 2505	984-12, 1274-12, 1576-12	98-12
SB2320	238	2099, 2766	1248-12, 1674-12	166-12
SB2323	111	2032, 2590	1020-12, 1582-12	103-12
SB2324	110	2033, 2793	1054-12, 1583-12	104-12
SB2335	239	2476	1305-12, 1654-12	97-12
SB2337	046	2122, 2729	1100-12, 1565-12	
SB2341	329 ¹	2295, 2675	1258-12, 1538-12	67-12
SB2344	280	2181, 2652	1132-12, 1552-12	175-12
SB2375	113	2291, 2466 ³	1259-12, 1502-12	19-12
SB2378	284	2304, 2731	1159-12, 1682-12	110-12
SB2383	228	2187, 2586	1133-12, 1675-12	90-12
SB2386	084	2052, 2574	1032-12, 1318-12, 1633-12	

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
SB2397	083	2055, 2465	1036-12, 1249-12, 1614-12	
SB2402	287	2213, 2460	980-12, 1290-12, 1566-12	14-12
SB2412	260	2142, 2734	1266-12, 1605-12	
SB2419	191	2382, 2685	1042-12, 1264-12, 1445-12	6-12
SB2435	199	2286, 2583	1171-12, 1615-12	161-12
SB2466	156	2249, 2644	1247-12, 1627-12	129-12
SB2486	214	2451	1494-12	22-12
SB2503	025	2453	1194-12	
SB2506	310	2241, 2669	1198-12, 1631-12	
SB2508	118	2124 ⁴	1019-12	21-12
SB2518	022	2048	1253-12, 1448-12	
SB2534	309	2200, 2637	998-12, 1236-12, 1628-12	
SB2540	133	2027, 2611	1224-12, 1554-12	76-12
SB2545	178	2004, 2612	1221-12, 1661-12	173-12
SB2576	216	2474	1068-12, 1309-12, 1577-12	109-12
SB2588	068	2473	1013-12, 1313-12, 1574-12	
SB2630	297	2437	1289-12, 1557-12	
SB2632	121	2288, 2775	982-12, 1677-12	10-12
SB2646	114	2137, 2494	1185-12, 1501-12	68-12
SB2648	020	2480	1147-12	
SB2650	023	2225	1292-12, 1507-12	
SB2655	321	2282, 2629	1073-12, 1207-12, 1621-12	78-12
SB2671	049	2343, 2786	1117-12, 1679-12	
SB2678	235	2392, 2634	1303-12, 1655-12	177-12
SB2695	122	2020, 2576	1260-12, 1681-12	169-12
SB2698	071	2440	1444-12	
SB2709	086	2192	988-12, 1271-12, 1598-12	
SB2737	202	2114, 2464	1144-12, 1666-12	96-12
SB2739	241	2089, 2607	1128-12, 1644-12	126-12
SB2740	138	2150, 2545	1232-12, 1825-12	
SB2742	323	2428	1152-12, 1684-12	88-12
SB2745	286	2447	1110-12, 1650-12	11-12
SB2746	168	2085, 2550	979-12, 1288-12, 1571-12	69-12
SB2747	089	2083, 2549	1038-12, 1183-12, 1567-12	
SB2748	229	2236, 2735	1215-12, 1587-12	7-12
SB2751	072	2209, 2791	1193-12, 1579-12	
SB2752	055	2038, 2736	1005-12, 1180-12, 1607-12	
SB2758	058	2041, 2579	1179-12, 1623-12	
SB2759	054	2068	1493-12	
SB2763	252	2174, 2580	1176-12, 1610-12	75-12
SB2765	253	2147, 2740	1210-12, 1611-12	15-12
SB2766	251	2036, 2741	1045-12, 1214-12, 1599-12	87-12
SB2767	250	2042, 2625	996-12, 1612-12	9-12
SB2768	066	2156, 2581	995-12, 1608-12	
SB2769	258	2238, 2742	1037-12, 1297-12, 1662-12	12-12
SB2772	061	2422	1102-12, 1553-12	
SB2773	135	2092, 2758	1091-12, 1555-12	84-12
SB2774	063	2167, 2632	1103-12, 1657-12	
SB2776	139	2146, 2656	1061-12, 1276-12, 1562-12	165-12
SB2778	269	2262, 2548	1135-12, 1548-12	155-12
SB2779	237	2239, 2772	1172-12, 1616-12	162-12
SB2780	222	2168, 2744	1149-12, 1622-12	157-12
SB2783	015	2380, 2710	1025-12, 1272-12, 1413-12	
SB2785	165	2106, 2748	1000-12, 1181-12, 1593-12	
SB2787	166	2067, 2743	1004-12, 1177-12, 1639-12	71-12
SB2790	175	2172, 2667	1034-12, 1634-12	
SB2796	062	2229, 2584	1124-12, 1541-12	

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
SB2797	120	2334, 2779	1173-12, 1544-12	91-12
SB2798	095	2139, 2620	986-12, 1687-12	
SB2800	163	2442	1009-12, 1222-12, 1688-12	77-12
SB2803	060	2224, 2501	1205-12, 1542-12	
SB2804	105	2314, 2773	1231-12, 1663-12	180-12
SB2808	031	2014, 2418	1126-12, 1543-12	
SB2810	157	2231, 2570	1010-12, 1200-12, 1545-12	80-12
SB2813	272	2233, 2642	1136-12, 1600-12	99-12
SB2816	273	2193, 2493	1530-12	92-12
SB2818	075	2356	977-12, 1549-12	
SB2820	087	2194, 2461	1189-12, 1601-12	
SB2821	162	2195	989-12, 1283-12, 1602-12	93-12
SB2822	078	2396, 2640	1108-12, 1652-12	
SB2825	275	2196, 2571	1047-12, 1298-12, 1596-12	72-12
SB2827	276	2191, 2780	1137-12, 1603-12	159-12
SB2828	096	2197	1008-12, 1223-12, 1604-12	
SB2833	158	2198, 2680	1011-12, 1201-12, 1546-12	94-12
SB2842	085	2478	1220-12, 1588-12	
SB2850	057	2487	1162-12, 1595-12	
SB2858	176	2457	1216-12, 1591-12	105-12
SB2859	177	2458	1151-12, 1589-12	
SB2865	077	2271, 2795	1252-12, 1563-12	
SB2866	076	2443	1250-12, 1564-12	
SB2868	180	2527	1531-12	
SB2871	311	2157, 2800	1139-12, 1447-12	13-12
SB2872	070	2438	1157-12, 1572-12	
SB2873	312	2446	978-12, 1285-12, 1537-12	23-12 ⁵
SB2874	047	2119, 2554	1015-12, 1568-12	
SB2876	313	2243, 2804	1040-12, 1311-12, 1630-12	
SB2877	069	2296, 2658	1199-12, 1569-12	
SB2933	195	2402, 2601	1140-12, 1629-12	174-12
SB2939	227	2336, 2781	1190-12, 1625-12	158-12
SB2947	189	2090, 2608	1076-12, 1649-12	176-12
SB2952	230	2095, 2614	1092-12, 1824-12	
SB2958	274	2332, 2587	1129-12, 1673-12	179-12
SB2971	021	2449	1101-12, 1449-12	
SB3001	144	2399, 2591	1160-12, 1559-12	106-12
SB3002	257	2377, 2498	1511-12	18-12
SB3003	097	2408, 2618	1109-12, 1635-12	
SB3006	271	2234, 2588	1107-12, 1653-12	95-12
SB3008	290	2345, 2792	1067-12, 1278-12, 1547-12	82-12
SB3010	218	2087, 2672	1156-12, 1685-12	
SB3024	011	2421	1018-12	
SB3025	098	2353, 2616	1295-12, 1665-12	
SB3029	034	2530	1353-12	
SB3031	088	2265, 2575	1263-12, 1499-12	
SB3062	256	2444	1120-12, 1624-12	17-12

PROPOSED CONSTITUTIONAL AMENDMENTS

HB2594	2913, 3302	241-12, 644-12, 870-12	26-12
SB0650	2515	1268-12, 1667-12	

Notes

1. Became Law without the Governor's signature.
2. See also Senate Floor Amendment 1 and House Floor Amendment 1.
3. See also Senate Floor Amendment 5.
4. See also Senate Floor Amendment 2.
5. See also Senate Floor Amendment 11 and House Floor Amendment 8.

TABLES SHOWING EFFECT OF ACTS

Twenty-Sixth State Legislature
2012 Regular Session

Key: Am = Amended _____ = Section number
N = New to be assigned in
R = Repealed HRS Supplement
Sp = Special Session

A. SECTIONS OF HAWAII REVISED STATUTES (HRS) AFFECTED

HRS Section No.	Effect	Affected By Act No.	HRS Section No.	Effect	Affected By Act No.
Volume 1			84-3, 12, 13, 14, 15, 18	Am	208
4-1	Am	133	87A- _____	N	304
6E-3, 5.5	Am	150	87A-1	Am	36
8- _____	N	73	87A-33	Am	38
8-11	Am	221	88- _____	N	153
10H-3, 4	Am	84	88-21	Am	153
11- _____	N	225	88-21.5	Am	152
11-14, 15, 24	Am	225	88-24	Am	72
11-156, 157	Am	34	88-74, 81, 335, 338	Am	153
11-334	Am	118	89-5	Am	49
11-381	Am	20	89-6	Am	130
12-5	Am	225	89-10.55	Am	130
12-8	Am	34	91-3, 4	Am	149
15-3.5	R	226	92-1.5	Am	176
15-4	Am	100	92-2	Am	202
		104	92-2.5	Am	177
15-5	Am	226	92-3.5	Am	202
17-7	Am	26	92-7	Am	177
23-3	Am	300	92-12	Am	176
25-1	Am	223	92F- _____	N	176
26-9	Am	182	92F-12	Am	133
26-16	Am	123	92F-15, 27	Am	176
26-20	Am	14	93- _____	N	63
26-35.5	Am	130	93-2, 3	Am	63
26H-4	Am	198	93-5	R	63
27-43	Am	224	93-11	Am	63
36-27	Am	190	103-50	Am	277
36-30	Am	156	103D- _____	N	173
		190	103D-102, 305	Am	173
		217	103D-309	Am	70
36-35, 36	Am	133			175
37-40	Am	175	103D-709	Am	173
39A- _____	N	147	103D-710	Am	173
(22 secs, pt _____)			103F-203	Am	4
C 39A, pt VI (heading)	Am	242	103F-401.5	Am	60
39A-191 to 197, 199,	Am	242			
203, 205, 206, 208			Volume 3		
Volume 2			121-15	Am	34
46- _____	N	83	128-6	Am	310
46- _____	N	114	128D-1	Am	34
46- _____ (2 secs)	N	294	132D- _____	N	319
46-15.1	Am	98	134-16	Am	148
46-171, 177	Am	294	138-1	Am	9
46-178	R	294	141-2	Am	124
47-4	Am	231	141-9	Am	329
76- _____	N	16	142-61	Am	34
76-16	Am	159	144-4, 9	Am	34
78- _____	N	45	145-22, 23, 25	Am	125
78-1	Am	115	145-26	R	125
			145-27	Am	125
			145-28	R	125

[illegible]

HRS Section No.	Effect	Affected By Act No.	HRS Section No.	Effect	Affected By Act No.
346-152	Am	163	431:1-201	Am	34
346-152.5, 154	Am	41	431:2-203	Am	66
346-163, 173	Am	161	431:7-101	Am	256
346-331 to 336, pt XIV	R	93	431:8-____ (9 secs)	N	66
346D-4.5	Am	93	431:8-102, 310, 317	Am	66
348F-7	Am	272	431:9A-102, 105, 108, 124	Am	66
349-____	N	238	431:9B-101, 102, 106	Am	66
349-____ (2 secs, pt ____)	N	237	431:10A-____	N	92
353-____ (7 secs, pt ____)	N	190	431:10A-126	Am	30
353-10	Am	76	431:10C-209.5	R	258
		139	431:10C-210	Am	258
353-22.6, 61, 63, 66, 69	Am	139	431:10C-301.5	Am	32
353B-6	Am	303	431:10D, pt VIII	Am	34
353C-7	Am	77	(heading)		
353H-____	N	76	431:10D-622, 626	Am	66
356D-____	N	164	431:10E-____	N	80
356D-6	Am	19	(4 secs, pt II)		
356D-92	Am	160	431:10E, pt I (heading)	N	80
356D-93	Am	160	431:14-____	N	258
363-5	Am	307	431:14-103.3, 104, 106	Am	258
363-7	R	307	431:16-105, 108, 112,	Am	250
371-31 to 37, pt II	R	201	203, 205, 206, 208 to 210, 212, 214, 217		
371-4	Am	261	431:16-219	R	250
371K-3	Am	39	431:19-101, 101.2	Am	253
371K-5, 6	R	39	431:19-101.3	R	253
372-1, 2 to 8	Am	14	431:19-101.5, 101.8,	Am	253
378-2.5	Am	299	102, 102.2 to 102.4, 104, 106, 106.5,		
383-7	Am	158	107 to 110, 111.5, 113, 115		
383-22	Am	6	431:19-115.7	N	253
383-66	Am	263	431:19-203, 308, 309	Am	253
383-68	Am	6	431L-2.5	Am	95
		263	432:1-____	N	92
383-69	Am	13	432:1-____	N	251
383-128, 129	Am	6	432:1-102	Am	251
386-1	Am	157	432:1-104	Am	34
		158	432:1-202, 301, 303 to 305	Am	251
386-93	Am	234	432:1-307	R	251
386-122	Am	262	432:1-405, 407	Am	251
392-5	Am	157	432:1-616	Am	30
		158	432:2-____	N	92
393-5	Am	157	432:2-101	Am	34
		158	432:2-602, 603	Am	251
397-____	N	103	432D-13, 17, 19	Am	251
397-5, 8	Am	103	432D-23	Am	92
			432E-5, 35	Am	34
Volume 8			Volume 10		
414-51	Am	58	436B-____	N	248
414-313	Am	11	436B-____ (2 secs)	N	247
414-403	Am	58	436B-27	Am	244
414D-14, 61, 71 to 73, 104.5, 182	Am	58	437-56	Am	246
414D-207, 208, 210	R	37	440E-1	Am	102
414D-250	Am	58	443B-3.5, 14	Am	52
415A-8, 14.6	Am	58	444-25	Am	260
421J-____ (2 secs)	N	182	447-1	Am	81
421J-2	Am	182	453-____	N	136
425-6, 14, 164	Am	58	453-5, 7.5	Am	296
425E-108, 211, 810	Am	58	453-8.8	Am	186
428-105, 205, 811	Am	58	454F-____ (3 secs)	N	252
			454F-1, 1.5 to 1.8, 2, 4.9, 8, 22	Am	252
Volume 9					
431:____-101 to 108 (Art ____)	N	321			

[illegible]

HRS Section No.	Effect	Affected By Act No.	HRS Section No.	Effect	Affected By Act No.
706-649	Am	303	708-895.5, 895.6, 895.7	Am	293
706-659	Am	292	709-906	Am	205
706-670	Am	139	710-_____	N	204
706-671	Am	50	711-1109.1, 1109.2	Am	25
707-700	Am	21	711-1111	Am	59
		316	712-_____	N	216
707-702.5, 703	Am	316	712-_____ (2 secs)	N	213
707-705	Am	21	712-1200	Am	216
		316	712-1240	Am	34
707-706	Am	21	712-1249.6	Am	23
707-715	Am	214	803-42	Am	94
707-751	Am	212	836-1	Am	325
708-_____	N	125	846-2.7	Am	93
708-_____	N	293			210
		328			285
708-_____ (6 secs, pt __)	N	244			299
708-831	Am	125	846-21 to 37, pt II	R	310
708-891, 891.5	Am	293	853-1	Am	295
708-893	Am	192			

B. SESSION LAWS OF HAWAII (SLH) AFFECTED

SLH No.	Effect	Affected By Act No.	SLH No.	Effect	Affected By Act No.
Laws 1980			Act 200	Am	106
Act 291	Am	138	Laws 2004		
Laws 1989			Act 41	Am	106
Act 316	Am	106	Act 51	Am	61
Laws 1990			Act 185	Am	138
Act 299	Am	106	Laws 2005		
Laws 1991			Act 178	Am	106
Act 296	Am	106	Laws 2006		
Laws 1992			Act 90	Am	145
Act 300	Am	106	Act 160	Am	106
Laws 1993			Laws 2007		
Act 289	Am	106	Act 86	Am	228
Laws 1994			Act 103	Am	188
Act 252	Am	106	Act 116	Am	154
Laws 1995			Act 161	Am	3
Act 218	Am	106	Act 165	Am	155
Laws 1996			Act 166	Am	220
Act 287	Am	106	Act 213	Am	106
Act 304	Am	138	Act 231	Am	138
Laws 1997			Act 253	Am	151
Act 290	R	168	Laws 2008		
Act 328	Am	106	Act 121	Am	138
Act 380	Am	145	Act 158	Am	106
Laws 1998			Act 173	Am	53
Act 116	Am	106	Act 213	Am	44
Laws 2001			Laws 2009		
Act 3	Am	145	Act 72	Am	196
Act 259	Am	106	Act 85	Am	48
Laws 2002			Act 87	R	312
Act 177	Am	106	Act 94	Am	3
Laws 2003			Act 139	Am	107
Act 176	Am	228	Act 151	Am	34
Act 198	Am	53	Act 162	Am	106
			Act 175	Am	173
			Act 198	Am	188

SLH No.	Effect	Affected By Act No.	SLH No.	Effect	Affected By Act No.
Laws 2009 Sp			Laws 2011		
Act 18	Am	186	Act 45	R	312
Act 24	Am	76	Act 48	Am	182
Laws 2010			Act 57	Am	48
Act 66	Am	324	Act 61	Am	107
Act 107	Am	173	Act 164	Am	106
Act 180	Am	106	Act 229	Am	64
Act 187	Am	175			
Act 205	Am	62			
		120			

**C. SECTION OF THE HAWAIIAN
HOMES COMMISSION ACT 1920
(HHCA) AFFECTED**

HHCA Section No.	Effect	Affected By Act No.
§213	Am	174
		175
§228	Am	175

**D. SECTIONS OF THE STATE
CONSTITUTION AFFECTED**

Section No.	Proposed Effect	Bill No.
ART VI, §3	Am	SB0650
ART VII, §12	Am	HB2594

GENERAL INDEX

2012 Regular Session

ACT

ABANDONED PROPERTY

Abandoned tires task force	271
Abandoned vessels.....	146
Unclaimed property; general amendments	229

ABUSE

Animals, <i>see</i> ANIMALS
Family or household member, <i>see</i> DOMESTIC ABUSE

ACCOUNTANTS

Peer review process; establishment.....	324
---	-----

ACCOUNTING AND GENERAL SERVICES

Distribution of electronic publications; plans for implementation.....	63
Elections, <i>see</i> ELECTIONS	
Hawaii state public library system; repair and maintenance.....	61
Information privacy and security council chair.....	71
Information technology procurements; status reports.....	222
Statewide enterprise resource planning; implementation.....	106 §6(3)

ACTIONS

Claims against the state.	116
emergency appropriation.	8
false claims.	294
Discrimination in real property transactions.	85
False claims.	294
Firearms; liability of owners on discharge.	301
Foreclosures.	182
Immunity from liability	
land owners during emergency.	291
volunteer medical assistance and emergency disaster response by pharmacists.	265
Limitation of actions; sexual offenses against minors.	68
Qui tam actions.	294
Uniform interstate depositions and discovery act.	17
Workers' compensation; attorneys' fees.	234

AGED PERSONS

Adult abuse perpetrator checks.	93
Aging and disability resource centers.....	237
Domestic services; certain employment exemptions.....	157
Elder services.....	238
Kupuna care program.	238
Nursing facility sustainability program.	156

AGRICULTURE

Agricultural-based commercial operations; definition.....	113
Agricultural inspection agreements.....	124
Agricultural tourism authorization.	329
Agriculture and aquaculture	
building permit exemptions.....	114
industries task force.	114
Bear gallbladders or bile; prohibited distribution.	126
Board of agriculture members.	123
Commodity ownership requirements.	125

Detector-dog program.....	128
Easement requirement exemption for legacy land acquisitions.....	284
Electronic importer manifest program.....	127
Hawaii-grown coffee label documentation.....	328
Livestock feed feasibility pilot project assessment.....	122
Renewable energy systems on agricultural lands.....	167
Water service; preferential rates for agricultural activities.....	232

AIRPORTS AND AIRCRAFT

Airport concession contract extension agreement.....	46
Airport passenger facility charge funds; supplemental allotments.....	106 §15(1)
Rental motor vehicle customer facility	
airport rental car facilities project revenue bonds.....	106 §14
charge special fund.....	106 §14
charge special fund allocations.....	106 §§4(3), (4)
Rental of airport land for non-aeronautical purposes.....	47

ALCOHOLIC BEVERAGES

see INTOXICATING LIQUORS

ANIMALS

Bear gallbladders or bile; prohibited distribution.....	126
Bee hive research.....	129
Cruelty to equine animals.....	25
Interisland transportation of live wild or feral deer.....	144
Livestock feed feasibility pilot project.....	122
Plant quarantine detector-dog program.....	128
Safe harbor agreements and habitat conservation plans.....	145
Terroristic threatening of pets or livestock.....	214

APPROPRIATIONS

Accounting and general services	
elections	
emergency appropriations.....	7
online voter registration system.....	225
reapportionment plan orders or judgments.....	106 §4(17)
grants for programs and services.....	215
reapportionment plan; funding for orders or judgments.....	106 §4(17)
statewide enterprise resource planning.....	106 §6(3)
Agriculture	
electronic importer manifest program.....	127
livestock feed feasibility pilot project.....	122
plant quarantine detector-dog program.....	128
reimbursement of qualified producers for feed.....	122
Bonds, <i>see BONDS</i>	
Budget and finance	
directed leave without pay program.....	106 §§4(15), (16)
personal services budget journal details.....	106 §15(16)
Business, economic development, and tourism	
Pacific International Space Center for Exploration Systems (PISCES).....	169
spaceport license application.....	101
venture accelerator funding program.....	170
Claims against the state.....	8, 116
Commerce and consumer affairs	
athletic trainer registration.....	198
Defense	
grants for programs and services.....	215

Education	
charter school implementation and transition coordinator	131
executive office on early learning.....	178
grants for programs and services	215
school based budgeting funds; restriction on transfers.	106 §15(2)
Emergency	
claims against the state.....	8
election voting system.....	7
human services general assistance program.....	40
Med-QUEST.....	31
National Kidney Foundation of Hawaii	1
Queen's Medical Center	1
university of Hawaii revenue bonds.....	3
Funds, <i>see FUNDS</i>	
Governor	
Hawaii health authority.....	280
Grants, <i>see also GRANTS, SUBSIDIES, AND PURCHASES OF SERVICE</i>	
Hawaiian home lands	
grants for programs and services	215
trust fund.....	106 §6(3)
Health	
aging and disability resource centers	237
childhood obesity prevention task force	269
elder services	238
emergency medical and ambulance services	268
grants for programs and services	215
Hawaii health authority.....	280
kupuna care program	238
Health premium payments, <i>see Public employees collective bargaining agreements, health fund costs, below</i>	
Human services	
general assistance program	40
grants for programs and services	215
Med-QUEST.....	31
telephone-based audible information access service for government information.....	199
Judiciary	
grants for programs and services	215
supplemental appropriations act of 2012	107
Labor and industrial relations	
boiler and elevator inspections	103
grants for programs and services	215
reduced ignition propensity cigarette program	233
weed and seed program	264
Land and natural resources	
aha moku advisory committee	288
buoy purchase for Kamaole beach	195
Honouliuli park site	235
Makaha valley flood study	283
watershed management initiatives	106 §15(17)
Legislature	5
Prosecuting attorney; staffing	322
Public employees collective bargaining agreements	
favored nation provisions	
units 2, 3, 4, 6, and 13.....	111
units 2, 3, 4, and 8	109
units 2, 3, 4, and 13	110
health fund costs	
unit 6.....	111
unit 7.....	112

Public employees collective bargaining agreements—cont'd	
health fund costs—cont'd	
unit 8.....	109
units 2, 3, 4, and 13.....	110
unit 1 settlement.....	106 §4(21)
Public safety	
automated victim information and notification system.....	190
Special purpose revenue bonds, <i>see BONDS, Special purpose revenue bonds</i>	
Supplemental appropriations act of 2012.....	106
Taxation	
staffing.....	189
Transportation	
safe routes to school program.....	317
zipper lane extension feasibility study.....	320
University of Hawaii	
bee hive research.....	129
revenue bonds.....	3

ARBITRATION AND MEDIATION

Medical torts.....	296
Uniform collaborative law.....	207

ARMED FORCES

see MILITARY

ATTORNEY GENERAL

Agriculture and aquaculture industries task force.....	114
Child support enforcement; amendments.....	35
Civil identification (state ID) function transferred.....	310
Criminal history record checks, <i>see CRIMES AND CRIMINAL JUSTICE</i>	
Rap back program.....	210

ATTORNEYS

Uniform collaborative law.....	207
Workers' compensation claims; attorneys' fees.....	234

AUDITOR

Appropriation.....	5
Higher education act report.....	132
Homestead service division; financial and management audit.....	106 §15(7)
Salary.....	300

BEACHES

see OCEAN AND MARINE RESOURCES

BEES

see ANIMALS

BICYCLES

Negligent homicide or injury to bicyclist.....	316
Safe routes to school program.....	317

BOARDS AND COMMISSIONS

Advisory commission on drug abuse and controlled substances; duties.....	87
Advisory council for community services; abolished.....	39
Agriculture and aquaculture industries task force.....	114

Aha moku advisory committee.....	288
Apprenticeship council.....	14
Board meetings by interactive conference technology.....	202
Board of agriculture members.....	123
Childhood obesity prevention task force.....	269
Disability and communication access board special fund; application fees.....	272
Driver's license reciprocity committee.....	314
Early intervention coordinating council members.....	96
Early learning advisory board.....	178
Early learning council; repealed.....	178
Electric device recycling task force.....	78
Employees' retirement system board appointments.....	72
Executive office on early learning.....	178
Hawaii health authority.....	280
Honouliuli park site advisory group.....	235
Information privacy and security council chair.....	71
Information technology steering committee.....	224
Interactive conference technology board meetings.....	202
Interagency task force on vog.....	64
Legacy land conservation commission; natural area reserves system commission's representative.....	82
Liquor commission's noise control pilot project.....	297
Medicaid buy-in program for working individuals with disabilities task force.....	200
Medical claim conciliation panels; name change and functions.....	296
Native Hawaiian roll commission; verification documents confidential.....	84
Offender reentry commission members; selection.....	76
Reapportionment commission placed within office of elections.....	223
Task force members' ethics exemptions.....	208
Tax review commission report.....	181
Testimony taken at canceled meeting.....	177
Used motor vehicle tires task force.....	271
West Maui ocean recreation management area advisory committee.....	194, 195

BOATS AND BOATING

Abandoned vessels on public and private properties; disposition.....	146
Fire boat; maintenance and operation.....	69
Grounded vessel removal.....	57
salvage by owner.....	57
Regulation of commercial activities; private marinas.....	289
Sailing school vessels.....	27
Small boat harbor use by commercial vessels.....	195

BONDS

General obligation bonds authorization.....	108
issuance for county public improvement projects.....	231
Revenue bonds Hula Mae multifamily revenue bond authorization increase.....	138
rental motor vehicle customer facility.....	106 §14
university of Hawaii.....	3
Special purpose revenue bonds Clearcom, Inc.....	242
dams and reservoirs.....	147, HB2594
Hawaii Pacific University.....	305
Hawaii Preparatory Academy.....	154
Honolulu Seawater Air Conditioning.....	155
Le Jardin Academy.....	230
Queen's Health Systems; extension authorization.....	228

Special purpose revenue bonds—cont'd	
St. Francis Healthcare System of Hawaii.....	227
telecommunications.....	242

BUDGET AND FINANCE

Directed leave without pay program; appropriations.....	106 §6(3)
Health benefits; unfunded liability.....	106 §4(22)
Health premium payments; unit 1 settlement.....	106 §4(21)
Personal services budget journal details.....	106 §15(16)
Unclaimed property; general amendments.....	229

BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Climate change adaptation priority guidelines.....	286
High technology innovation corporation repealed.....	240
Hydrogen investment capital special fund moneys expended by Hawaii strategic development corporation.....	240
Pacific International Space Center for Exploration Systems (PISCES).....	169
Small business regulatory review board.....	241
Spaceport license application.....	101
Tourism authority; unencumbered reserve moneys.....	243

CEMETERIES

Burial of military service members and dependents.....	307
Crematorium air pollution control permits.....	278

CHILDREN

Apheresis stem cell collection program for pediatric bone marrow transplants; grant.....	274
Child care providers and facilities	
adult abuse perpetrator record checks.....	41
exemptions.....	163
licensing and registration fee.....	161
Childhood obesity prevention task force.....	269
Child protective act; aggravated circumstances.....	28
Children and youth day and month.....	221
Child support enforcement	
general amendments.....	35
health care coverage.....	35
Concussion awareness program; development and guidelines.....	197
Influenza vaccinations by pharmacists.....	42
Sexual offenses against, <i>see</i> SEXUAL OFFENSES	

CIRCUIT COURT

Office of information practices decision; agency appeal.....	176
Retired judges; temporary appointments.....	SB650
Service of process; authorized persons.....	142

CIVIL UNIONS

General amendments.....	267
Rights of reciprocal beneficiaries upon change.....	267
Solemnization; religious organizations.....	267

COLLECTION AGENCIES

Out-of-state collection agency.....	52
-------------------------------------	----

COMMERCE AND CONSUMER AFFAIRS

Basic health program; feasibility study.....	254
Business registration amendments.....	58
Captive insurance companies; accreditation standards.....	253
Consumer protection, <i>see</i> CONSUMER PROTECTION	
Early intervention coordinating council members.....	96
Homeowners insurance claims history information.....	80
Military sentinel network access.....	249
Mortgage rescue fraud education.....	183
Physician workforce assessment fee extension.....	186
Professions and occupations, <i>see</i> PROFESSIONS AND OCCUPATIONS	
Regulation and publication of insurance rates by insurance commissioner.....	258
Telecommunications and cable industry information reporting requirements.....	259

COMMERCIAL CODE

Secured transactions; general amendments.....	33
---	----

COMMUNITY DEVELOPMENT AUTHORITY

Kakaako community development district lease of projects.....	323
Kakaako makai; conveyance of certain parcels to office of Hawaiian affairs.....	15
Members.....	323

CONDOMINIUMS

Foreclosures.....	182
Leased fee interest sale; tax deduction.....	220
Unpaid assessments.....	182
Utilities; separate meter installation by board approval.....	18

CONSTITUTION, STATE

Retired judges; temporary appointments.....	SB650
Special purpose revenue bonds; dams and reservoirs.....	HB2594

CONSUMER PROTECTION

Hawaii-grown coffee; false labeling.....	328
Life settlements model act.....	256
Military sentinel network access.....	249
Mortgage rescue fraud prevention.....	183
Portable electronics; limited lines insurance.....	321
Transient accommodations' local contact information.....	326
Warranty reimbursement for car parts.....	246

CONTRACTORS

Expedited bridge construction projects.....	218
Payments to subcontractors.....	260
Unlicensed contracting.....	244

CONTROLLED SUBSTANCES

see **DRUGS**

CORPORATIONS

Business registration amendments.....	58
Mergers	
publicly traded corporation.....	11
shareholder voting requirements.....	11
Nonprofit corporations, <i>see</i> NONPROFIT CORPORATIONS	

CORRECTIONS

see *PRISONS AND PRISONERS*

COUNTIES

Abandoned vessels on public and private properties; disposition	146
Affordable housing credits	98
Agricultural and aquacultural building permit exemptions	114
Bond issuance for revenue-producing undertakings	231
Burial of military service members and dependents	307
Civil identification (state ID) by examiner of drivers	310
Criminal history record checks	299
Elections	
absentee ballot mailouts	100
absentee ballot-only election	104
Electronic publication notifications	63
False claims	294
Fire sprinkler requirement in certain dwellings or buildings prohibited	83
Health care delivery; public-private partnerships	279
Liquor commission; noise control pilot project	297
Liquor licensee's suppression of illegal activities	88
Prosecuting attorney grants	322
Public employees; pretax transportation benefit program	45
Public safety agency	9
Qui tam actions or recovery	294
Safe routes to school program	317
Subdivision and special management area permits; concurrent processing	239
Water safety officers' allowance on service retirement	153

CRIMES AND CRIMINAL JUSTICE

Adult abuse perpetrator checks	93
Aerial luminaries	319
Agricultural theft	125
Bear gallbladders or bile; prohibited distribution	126
Child pornography; possession	212
Child protective act; aggravated circumstances	28
Computer fraud and unauthorized access	293
Controlled substances; promotion near public housing	23
Criminal history record checks	
county employees	299
department of health	285
rap back program	210
Criminal process records	325
Cruelty to equine animals	25
Disrespect of a house of the legislature	204
Domestic abuse orders	205
Harassment by cyberbullying	192
Hawaii-grown coffee false labeling	328
Interisland transportation of live wild or feral deer	144
Mobile electronic device use while operating commercial vehicle	311
Negligent homicide or injury to a vulnerable user of a roadway	316
Negligent injury caused by operation of vehicle	21
Prisons and prisoners, see <i>PRISONS AND PRISONERS</i>	
Probation services fees for deferral pleas	295
Production of out-of-state records	325
Promoting minor-produced sexual images ("sexting")	213
Sexual offenses, see <i>SEXUAL OFFENSES</i>	
Temporary restraining orders; first time violations with previous felony conviction record	206

Terroristic threatening of pets or livestock.	214
Unlicensed contracting.	244
Violation of privacy.	59
Weed and seed program.	264

CULTURE AND THE ARTS

Aha moku advisory committee; cultural practices and resource management.	288
Historic preservation signage.	150
Honouliuli park site.	235
Uluulu: Henry Kuualoha Giugni moving image archive of Hawaii.	90

DEATH

Anatomical gift.	270
Crematorium air pollution control permits.	278
Death benefit amount for public assistance recipients.	62
Disposition of unclaimed dead body.	75
Estate and generation-skipping transfer tax.	220
Mortality review of persons with developmental or intellectual disabilities.	162
Unclaimed dead human body cremated at public's expense.	62

DEER

Interisland transportation of live wild or feral deer.	144
---	-----

DENTISTRY

Dental hygienists' display of license.	81
---	----

DISABLED PERSONS

Aging and disability resource centers.	237
Developmental or intellectual disabilities; mortality review.	162
Disability and communication access board; building plan review fee and fee schedule.	277
Domestic services; certain employment exemptions.	157, 158
Medicaid buy-in program for working individuals with disabilities task force.	200
Telephone-based audible information access service for government information.	199

DISASTERS

Land owner exempt from civil liability during emergency.	291
Volunteer medical assistance and emergency disaster response by pharmacists.	265

DISCRIMINATION

Employment; relief from retaliatory discrimination actions.	294
Real property transactions.	85

DISEASES

Apheresis stem cell collection program for pediatric bone marrow transplants; grant.	274
Developmental or intellectual disabilities; mortality review.	162
Immunization registry.	275
Kidney and liver transplant program; Queen's Medical Center grant.	1

DISTRICT COURT

Retired judges; temporary appointments.	SB650
Service of process; authorized persons.	142

DOMESTIC ABUSE

Domestic violence awareness month.....	73
Orders.....	205
Temporary restraining orders; first time violations with previous felony conviction record.....	206

DRUGS

Advisory commission on drug abuse and controlled substances.....	87
Controlled substances	
drug classification amendments.....	29
herbal incense or bath salts (synthetic hallucinogens).....	29
promotion near public housing.....	23
Pseudoephedrine sales tracking.....	119
Psychotropic medication coverage for QUEST and medicaid members.....	120

EDUCATION

Charter school implementation and transition coordinator.....	131
Concussion awareness program; development and guidelines.....	197
Early learning advisory board.....	178
Executive office on early learning; duties and powers.....	178
General amendments.....	133
Hawaii health systems corporation.....	16
Hawaii Preparatory Academy; special purpose revenue bonds.....	154
Higher education act report.....	132
Home-to-school transportation funding report.....	106 §4(11)
Le Jardin Academy; special purpose revenue bonds.....	230
Libraries	
nonprofit organizations' use of facilities for fundraising.....	308
personnel and facilities management.....	61
Operating budget expenditures report.....	106 §15(9)
Per pupil allocations.....	106 §15(10)
Pre-plus program.....	178
Public charter schools.....	130
Safe routes to school program.....	317
Sailing school vessels.....	27
School based budgeting funds; restriction on transfers.....	106 §15(2)
School facilities special fund.....	309
School health aides duties and compensation.....	134
Universities, <i>see</i> UNIVERSITIES AND COLLEGES	
University of Hawaii, <i>see</i> UNIVERSITY OF HAWAII	

ELDERLY PERSONS

see **AGED PERSONS**

ELECTIONS

Absentee ballot mailouts.....	100
Absentee ballot-only elections.....	104
Campaign fund uses; scholarships for students.....	20
Electronic voter registration application.....	225
Filing deadline of preliminary and supplemental disclosure reports for candidates.....	118
Office of Hawaiian affairs vacancies.....	26
Reapportionment commission; appropriation request.....	223
Reapportionment plan litigation; funding for orders or judgments.....	106 §4(17)
Uniform military and overseas voters act.....	226
Voting system; emergency appropriation.....	7

EMERGENCY RESPONSE

Emergency medical and ambulance services; appropriation.	268
Enhanced 911 services; public safety agency designation.	9
Land owner exempt from civil liability during emergency.	291
Medical disaster response by pharmacists.	265
Move over one lane for emergency vehicles.	318
Negligent homicide or injury to a vulnerable user of a roadway.	316

EMPLOYERS AND EMPLOYEES

see also PUBLIC EMPLOYMENT

Labor and industrial relations, <i>see LABOR AND INDUSTRIAL RELATIONS</i>	
Unemployment compensation maximum benefit amounts.	6
Unemployment compensation, <i>see EMPLOYMENT SECURITY</i>	
Workers' compensation, <i>see WORKERS' COMPENSATION</i>	

EMPLOYMENT SECURITY

Child support enforcement; notice requirements.	35
Criminal history checks; rap back program.	210
Employer's contribution rate and wage base; temporary assessment authorized.	6
Employer's contribution rate schedule.	263
Maximum weekly benefit amount.	6
Unemployment insurance rate contribution by employer; appeals.	13

ENERGY

Cost recovery of power purchase agreements for electric companies.	55
Electric reliability standards.	166
Electric vehicle parking spaces.	89
Fuel tax on naphtha.	188
Geothermal resources	
development on public lands.	193
exploration and development.	97
Interisland undersea transmission cable system.	165
Natural energy institute.	151
Renewable energy systems on agricultural lands.	167
Stabilization of electric utility rates by the public utilities commission.	99

ENGINEERS, ARCHITECTS, AND SURVEYORS

Land surveying; landscape architect.	79
---	----

ENVIRONMENT

Climate change adaptation priority guidelines.	286
Crematorium air pollution control permits.	278
Electric device recycling task force.	78
Environmental assessment exemptions for secondary actions.	312
Environmental impact statements; assessment bypass.	172
Geothermal resources; exploration and development in conservation districts. ...	97
Interagency task force on vog.	64
Night sky protection act.	287
Noise control pilot project.	297
Noxious invasive pest program; budget report.	106
Used motor vehicle tires task force.	271

ESTATE AND TRANSFER TAX

Generation-skipping reform.	220
----------------------------------	-----

ETHICS

Task force members' exemptions	208
--------------------------------------	-----

ETHICS COMMISSION

Appropriation.	5
---------------------	---

EVIDENCE

Criminal process records.	325
Production of out-of-state records.....	325

FAMILY COURT

Service in lieu of publication.	290
Temporary restraining orders; first time violations with previous felony conviction record.....	206

FILM AND TELEVISION

Uluulu: Henry Kuualoha Giugni moving image archive of Hawaii.	90
--	----

FINANCIAL INSTITUTIONS

Foreclosures	
association alternate power of sale foreclosure process.	182
general amendments.....	182
homeowner association liens.	182
Predatory lending practices prevention; military members.	249

FIREARMS

Electric gun use; accreditation.	148
Liability of owners on discharge.....	301

FIRE PROTECTION

Aerial luminaries.	319
Fire sprinkler requirement in certain dwellings or buildings prohibited.....	83

FOOD

Hawaii-grown coffee; false labeling.....	328
--	-----

FORECLOSURES

see REAL PROPERTY

FOREIGN COUNTRIES AND GOVERNMENT

Driver's license reciprocity committee.....	314
Expanded visa program for visitors.	171

FUEL TAX

Naphtha.	188
---------------	-----

FUNDS

Automated victim information and notification system	
special fund; establishment.	190
Boiler and elevator special fund; establishment.	103

Child care licensing and registration special fund; establishment.....	161
Convention center enterprise special fund; allocations from transient accommodations tax on fiscal year basis.....	243
Disability and communication access board special fund; application fees.....	272
Energy systems development special fund.....	151
Federal reimbursement maximization special fund.....	77
Fire boat maintenance and operation special fund.....	69
Harbor special fund deposit for maritime transportation security violations.....	313
Hawaiian home lands trust funds; procurement code flexibility.....	174
Hospital sustainability program special fund; establishment.....	217
Library special fund moneys from nonprofit organizations.....	308
Nursing facility sustainability program special fund.....	156
Probation services special fund.....	303
Reduced ignition propensity cigarette program special fund; establishment.....	233
Safe routes to school program special fund; establishment.....	317
School facilities special fund.....	309
Stadium facilities special fund; establishment.....	282
Tobacco settlement special fund annual budget report.....	106 \$4(9)
childhood obesity prevention task force appropriation.....	269
university of Hawaii.....	2
Transfer of funds interstate transfer fee to probation services special fund.....	303
Trauma system special fund uses.....	276
Unemployment compensation fund; employer's contribution rate schedule.....	263
University of Hawaii Hawaii health corps revolving fund.....	187
professional student exchange special fund.....	137
Uluulu: Henry Kuualoha Giugni moving image archive of Hawaii special fund.....	90
university revenue-undertakings fund.....	2

GASOLINE AND PETROLEUM PRODUCTS

Naphtha.....	188
Public utilities commission; stabilization of electric utility rates.....	99

GENERAL EXCISE TAX

Exemption for nonprofit public water system companies.....	184
Tax benefit denial for nonprofit organizations.....	219

GOVERNOR

Department of defense; memorandum of understanding.....	65
Salary reduction period clarified.....	48

GRANTS, SUBSIDIES, AND PURCHASES OF SERVICE

Contract proposals to operate child care programs.....	60
Elder services.....	238
Kapiolani Medical Center for Women and Children apheresis stem cell collection program.....	274
National Kidney Foundation of Hawaii.....	1
Programs and services; appropriations.....	215
Prosecuting attorney; staffing.....	322
Psychotropic medication coverage for QUEST and medicaid members.....	120
Purchases of service; provider participation in delivery plan.....	4
Queen's Medical Center; kidney and liver transplant program.....	1
Wahiawa General Hospital.....	215

GROUP HOMES

Adult care homes; liability insurance	266
Child care providers and facilities licensing	161

GUARDIANS AND CONSERVATORS

Uniform adult guardianship and protective proceedings jurisdiction act	236
--	-----

HARBORS

Civil violations system	313
Fire boat; maintenance and operation	69
Small boat harbor use by commercial vessels	195

HAWAIIAN AFFAIRS

see OFFICE OF HAWAIIAN AFFAIRS

HAWAIIAN HOME LANDS

Affordable housing credits	98
Commercial and multipurpose leases	175
Homestead service division; financial and management audit	106 §15(7)
Housing projects; funding	175
Trust funds	
appropriations	106 §6(3)
procurement code flexibility	174

HAWAIIAN PEOPLE

Aha moku advisory committee; cultural practices and resource management	288
Office of Hawaiian affairs, <i>see OFFICE OF HAWAIIAN AFFAIRS</i>	
Roll verification documents confidential	84

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

see COMMUNITY DEVELOPMENT AUTHORITY

HAWAII (ISLAND)

Interagency task force on vog	64
Repair and maintenance of state hospitals	106 §§6(2), (3)
Work release pilot program for incarcerated persons	117

HEALTH

Adult care homes; liability insurance required	266
Adult day care centers	93
Advisory commission on drug abuse and controlled substances; duties	87
Aging and disability resource centers	237
Anatomical gift	270
Apheresis stem cell collection program for pediatric bone marrow transplants; grant	274
Childhood obesity prevention task force	269
Community care foster family homes	93
Crematorium air pollution control permits	278
Criminal history record checks	285
Disability and communication access board; building plan review fee and fee schedule	277
Disposition of unclaimed dead body	75
Early intervention coordinating council members	96
Elder services	238
Electric device recycling task force	78
Environmental impact statements; assessment bypass	172

Equitable referral system for medicaid patient discharge; development.	211
Five-year financial plan.	106 \$4(10)
Hawaii health authority.	280
Hawaii health systems corporation.	16
Hawaii Medical Center-East assimilation.	281
health care delivery; public-private partnerships.	279
Health insurance, <i>see INSURANCE, Health</i>	
Home and community-based case management.	93
Hospital accreditation in lieu of licensing inspection.	273
Immunization registry	
health insurer record access.	275
registry inclusion refusal.	275
submission by pharmacists.	42
Information released to other agencies.	86
Informed consent for pelvic exams.	136
Interagency task force on vog.	64
Kidney and liver transplant program.	1
Kupuna care program.	238
Medical records; health care privacy harmonization act.	315
Mortality review of persons with developmental or intellectual disabilities.	162
Office of language access; establishment.	201
Pseudoephedrine sales tracking.	119
Purchases of health and human services; delivery plan.	4
School health aides duties and compensation.	134
Tobacco settlement special fund; annual budget report.	106 \$4(9)
Trauma system special fund uses.	276

HIGH TECHNOLOGY

Information technology procurements; status reports.	222
Pacific International Space Center for Exploration Systems (PISCES).	169
Telecommunications and cable industry information reporting.	259
Venture accelerator funding program; establishment.	170

HISTORIC PRESERVATION

Honouliuli park site advisory group.	235
Signage policy and fee determination.	150

HOLIDAYS AND CELEBRATIONS

Children and youth day and month.	221
Domestic violence awareness month.	73

HONOLULU

Expedited bridge construction projects.	218
Fire boat; maintenance and operation.	69
Honouliuli park site.	235
Hospitals, <i>see HOSPITALS</i>	
Kakaako community development district lease of projects.	323
Kakaako makai; conveyance of certain parcels to office of Hawaiian affairs.	15
Makaha valley flood study.	283
Night sky protection strategy.	287
Noise control pilot project.	297

HORSES

see ANIMALS

HOSPITALS

Distribution of unclaimed dead body for research.	75
--	----

Full accreditation in lieu of licensing inspection.....	273
Hawaii health systems corporation	
Hawaii medical center-east assimilation.....	281
repair and maintenance of hospitals.....	106 §§6(2), (3)
Health care privacy harmonization act.....	315
Hospital sustainability program fee.....	217
Kapiolani Medical Center for Women and Children; apheresis stem cell collection program grant.....	274
Queen's Health Systems; special purpose revenue bonds extension authorization.....	228
Queen's Medical Center; kidney and liver transplant program grant.....	1
St. Francis Healthcare System of Hawaii; special purpose revenue bonds.....	227
Wahiawa General Hospital grant.....	215

HOUSING

Affordable housing credits.....	98
Fire sprinkler requirement in certain dwellings or buildings prohibited.....	83
Foreclosures	
association alternate power of sale foreclosure process.....	182
distressed property consultant prohibitions; criminal penalties.....	183
mortgage rescue fraud consumer education.....	183
Hawaiian home lands funding of housing project construction.....	175
Hawaii interagency council on homelessness.....	105
Hula Mae multifamily revenue bond authorization increase.....	138
Landlord-tenant code; entities exempt from.....	43
Public housing	
drug distribution, possession, or manufacturing prohibited.....	23
evictions.....	160
housing project developments in public-private partnerships.....	164
resident advisory board nomination list.....	19
workers hired to work on vacant housing units; civil service exemption.....	159

HUMAN RESOURCES DEVELOPMENT

Community rehabilitation programs; reporting requirements repealed.....	44
Hawaii state public library system; personnel management.....	61
Workforce demographic profile.....	16

HUMAN SERVICES

Adult day care centers; transfer of functions.....	93
Child care providers and facilities	
adult abuse perpetrator record checks.....	41
exemptions.....	163
licensing and registration fee.....	161
Community care foster family homes; transfer of functions.....	93
Contract proposals to operate child care programs.....	60
General assistance program; emergency appropriation.....	40
Hawaii interagency council on homelessness; safe facilities study.....	105
Home and community-based case management; transfer of functions.....	93
Hospital sustainability program fee collection.....	217
Interim assistance reimbursement agreement.....	106 §15(5)
Medicaid	
buy-in program for working individuals with disabilities task force.....	200
equitable referral system for patient discharge; development.....	211
health insurers; member list reports.....	95
lien notice for payment.....	211
Med-QUEST; emergency appropriation.....	31
recipient's attorney's fees formula; establishment.....	211
Mortuary and cremation services for unclaimed dead human body.....	62
Psychotropic medication coverage for QUEST and medicaid members.....	120

Public housing evictions	160
Purchases of health and human services; delivery plan.....	4
Record disclosure per court order.....	91

IDENTIFICATION

Civil identification (state ID) cards; issuing agency.....	310
Scanned identification card information.....	191

INCOME TAX

Capital gains exemption for leased fee interest of condominium sales; sunset extended.....	220
Claim of refund or credit for underpayment application.....	185
Conformity to internal revenue code.....	179
Interisland undersea transmission cable surcharge exemption.....	165
Nonprofit public water system companies; exemptions.....	184

INFORMATION

Child care providers and facilities; adult abuse perpetrator record checks.....	41
Criminal process records.....	325
Enhanced 911 services; public safety agency designation.....	9
Immunization registry	
health insurer record access.....	275
registry inclusion refusal.....	275
submission by pharmacists.....	42
Information privacy and security council chair.....	71
Information technology steering committee.....	224
Medical records; health care privacy harmonization act.....	315
Native Hawaiian roll commission; verification documents confidential.....	84
Office of information practices decision; agency appeal.....	176
Production of out-of-state records.....	325
Record disclosure per court order.....	91
Scanned identification card information.....	191
Telecommunication service providers; emergency disclosures.....	94
Telephone-based audible information access service for government information.....	199
Vital statistics; information released to government agencies.....	86

INSURANCE

Adult care homes; liability insurance required.....	266
Basic health program; feasibility study.....	254
Benefit societies; mammograms, annual screening and referral.....	92
Captive insurance companies; accreditation standards.....	253
Guaranty associations.....	250
Health	
cancer treatments policies.....	30
insurers' member list reports.....	95
mammograms; annual screening and referral.....	92
medical record disclosure.....	315
privacy harmonization act.....	315
Homeowners claims history information.....	80
Immunization registry record access.....	275
Insurance producer; licensing.....	66
Licensing	
general amendments.....	66
insurance producer.....	66
reinsurance intermediary.....	66
surplus lines brokers.....	66
Licensing and regulation.....	251

Life settlements model act.	256
Notice of employer's insurance for workers' compensation.	262
Portable electronics; limited lines insurance.	321
Regulation and publication of rates by insurance commissioner.	258
Reinsurance intermediary; licensing.	66
Surplus lines brokers; licensing.	66
Temporary disability	
domestic services; employment exemption.	157
domestic services for disabled individuals; employment exemption.	158

INTERMEDIATE APPELLATE COURT

Retired judges; temporary appointments.	SB650
Service of process; authorized persons.	142

INTOXICATING LIQUORS

Driving under the influence	
driver's license renewal while license revoked.	327
ignition interlock program.	327
motor vehicle registration stopper removal.	327
permits; eligibility and requirements.	327
Liquor commission; criminal history record checks.	299
Liquor licensee's suppression of illegal activities.	88
Sale by manufacturer license holder.	302

JUDICIARY

Criminal process records.	325
Interstate transfer fee to probation services special fund.	303
Judges	
retired; temporary appointments.	SB650
salary reduction period clarified.	48
Production of out-of-state records.	325
Supplemental appropriations act of 2012.	107
Uniform adult guardianship and protective proceedings jurisdiction act.	236
Uniform interstate depositions and discovery act.	17

KAUAI

Absentee ballot-only elections.	104
Expedited bridge construction projects.	218
Repair and maintenance of state hospitals.	106 §6(3)

LABOR AND INDUSTRIAL RELATIONS

Advisory council for community services; abolished.	39
Appeals board hearing notices.	261
Apprenticeship program.	14
Attorney's fees assessed for claims without reasonable grounds.	234
Boiler, pressure system, elevator, kindred equipment,	
and amusement ride inspection fees.	103
Civil rights commission; discrimination in real property transactions.	85
Labor relations board staff appointments.	49
Language access; transfer of function.	201
Notice of employer's insurance for workers' compensation.	262
Reduced ignition propensity cigarette program; appropriation.	233

LAND AND NATURAL RESOURCES

Abandoned vessels on public and private properties; disposition.	146
Aha moku advisory committee; establishment.	288
Buoys; Maui beaches.	195

Central Maui regional park; state park improvements.....	106 §6(3)
Dams and reservoirs; special purpose revenue bonds.....	147, HB2594
Easement requirement exemption for legacy land acquisitions	284
Electric gun use; accreditation.....	148
Emergency administrative rules; conditions for adoption.....	149
Enforcement of conservation rules, plans, etc.; repealed.....	145
Geothermal resources	
development on public lands.....	193
exploration and development.....	97
Grounded vessel removal.....	57
Historic preservation signage policy and fee determination.....	150
Honouliuli park site advisory group.....	235
Interisland transportation of live wild or feral deer.....	144
Lands accreted after May 20, 2003.....	56
Legacy land conservation commission; natural area reserves system	
commission's representative.....	82
Makaha valley flood study.....	283
Ocean safety in nearshore waters.....	195
Public lands, <i>see PUBLIC LANDS</i>	
Regulation of commercial activities; private marinas.....	289
Safe harbor agreements and habitat conservation plans.....	145
Small boat harbor use by commercial vessels.....	195
Transfer of parcels of land to public land development corporation.....	282
Watershed management initiative report.....	106 §15(17)
West Maui ocean recreation management area advisory committee.....	194, 195

LAND COURT

Deregistering fee time share interest procedures.....	121
Fee time share interest recording requirements.....	121
Lands accreted after May 20, 2003.....	56

LAND USE

Agricultural tourism authorization.....	329
Geothermal resources; exploration and development.....	97
Renewable energy systems on agricultural lands.....	167
Subdivision and special management area permits; concurrent processing.....	239

LANGUAGE

Office of language access; establishment.....	201
---	-----

LEGISLATIVE REFERENCE BUREAU

Appropriation.....	5
--------------------	---

LEGISLATURE

Appropriation.....	5
Disrespect of a house.....	204
Salary reduction period clarified.....	48
Travel allowance.....	5

LIBRARIES

Bond memorial library; repeal.....	135
Distribution of electronic publications; plans for implementation.....	63
Nonprofit organizations' use of library facilities for fundraising.....	308
Personnel and facilities management.....	61
State librarian's duties and powers.....	135

LIEUTENANT GOVERNOR

Salary reduction period clarified.....	48
--	----

LONG TERM CARE

Nursing facility sustainability program.....	156
--	-----

MARRIAGE

Property conveyed into trust.....	209
-----------------------------------	-----

MAUI

Absentee ballot-only elections.....	104
Central Maui regional park.....	106 §6(3)
Expedited bridge construction projects.....	218
Honokowai water system; appropriations.....	106 §6(3)
Repair and maintenance of state hospitals.....	106 §6(3)
Veterans cemetery in Makawao; capital improvement project.....	106 §6(1)
West Maui	
Kaanapali beach buoy relocation.....	195
Kamaole beach buoys.....	195
ocean recreation management area advisory committee.....	194, 195

MEDICAL RECORDS

see INFORMATION

MILITARY

Active duty personnel and dependents	
burials in veterans' cemeteries.....	307
driver's license validity after expiration.....	22
Burials in veterans' cemeteries.....	307
College-credit equivalency program; armed forces experience credit.....	12
Makawao veterans cemetery; capital improvement project.....	106 §6(1)
Memorandum of understanding with Hawaii.....	65
Predatory lending practices prevention.....	249
Professional and occupational licenses	
licensure by endorsement or reciprocity for nonresident military spouses.....	247
licensure by training, experience, or education.....	248
Uniform military and overseas voters act.....	226

MIXED MARTIAL ARTS

Defined.....	102
--------------	-----

MOTOR VEHICLES

Drivers' licenses	
active duty military members and dependents.....	22
driving under the influence	
ignition interlock program.....	327
permits; eligibility and requirements.....	327
registration stopper removal.....	327
foreign country reciprocity committee.....	314
program consolidation with civil identification (state ID) cards.....	310
renewal while license revoked.....	327
revocation or suspension	
manslaughter or negligent homicide convictions.....	292
vehicle weight.....	10
Electric vehicles	
incentives.....	168

Electric vehicles—cont'd	
parking spaces.....	89
Examiner of drivers; issuance of civil identification (state ID) cards.....	310
Insurance; covered loss deductible.....	32
Mobile electronic device use while operating commercial vehicle.....	311
Motor carriers	
indemnity agreements.....	298
unlawful operation.....	203
Move over one lane for emergency vehicles.....	318
Negligent homicide or injury to a vulnerable user of a roadway.....	316
Rental motor vehicles, <i>see AIRPORTS AND AIRCRAFT</i>	
Safe routes to school program surcharge.....	317
Tax lien and encumbrance record.....	67
Traffic infractions on harbor property.....	313
Used motor vehicle tires task force.....	271
Vehicle defined.....	21
Warranty reimbursement for car parts.....	246

NONPROFIT CORPORATIONS

Business registration amendments.....	58
Conversion to for-profit corporations; repealed.....	37
General excise tax benefit denial.....	219
Tax exemption for nonprofit public water system companies.....	184

NUISANCES

Liquor commission's noise control pilot project.....	297
--	-----

NURSES

Center for nursing fee assessment made permanent.....	53
Loan repayment program through Hawaii health corps.....	187
Registered and licensed practical nurse; definition.....	255

OCEAN AND MARINE RESOURCES

Coastal zone management; special management area use permits.....	239
Ocean safety in nearshore waters.....	195
Regulation of commercial activities; private marinas.....	289
Sailing school vessels.....	27
West Maui	
buoys at beaches.....	194, 195
ocean recreation management area advisory committee.....	194, 195

OFFICE OF HAWAIIAN AFFAIRS

Board of trustees; nomination paper filing deadlines.....	26
Land conveyance; certain parcels from Kakaako makai.....	15
Native Hawaiian roll commission; verification documents confidential.....	84

OMBUDSMAN

Appropriation.....	5
--------------------	---

PENAL CODE

Agricultural theft.....	125
Child pornography; possession.....	212
Computer fraud and unauthorized access.....	293
Controlled substances; promotion near public housing.....	23
Cruelty to equine animals.....	25
Disrespect of a house of the legislature.....	204

Domestic abuse orders.....	205
Harassment by cyberbullying.....	192
Hawaii-grown coffee false labeling.....	328
Negligent homicide or injury to a vulnerable user of a roadway.....	316
Negligent injury caused by operation of vehicle.....	21
Probation services fees for deferral pleas.....	295
Promoting minor-produced sexual images ("sexting").....	213
Terroristic threatening of pets or livestock.....	214
Unlicensed contracting.....	244
Violation of privacy.....	59

PEST CONTROL

One call center.....	196
----------------------	-----

PHARMACISTS

Continuing education requirements.....	24
Influenza vaccinations to children.....	42
Volunteer medical assistance and emergency disaster response personnel.....	265

PHYSICIANS AND SURGEONS

Immunization registry submission by pharmacists.....	42
Informed consent for pelvic exams.....	136
Loan repayment program through Hawaii health corps.....	187
Mammogram referral.....	92
Medical claim conciliation panels; name change and functions.....	296
Medical records; health care privacy harmonization act.....	315
Physician workforce assessment fee extension.....	186

PLANTS

see AGRICULTURE

POLICE

Domestic abuse orders.....	205
Move over one lane for emergency vehicles.....	318
Service of process; authorized persons.....	142
Telecommunication service providers; emergency disclosures.....	94

PRISONS AND PRISONERS

Convicted defendants	
detention credit not given for separate unrelated felony conviction.....	50
early discharge probation; probation officer's report.....	143
pre-sentence diagnosis and report by intake service center.....	51
pretrial assessments and supervision by reentry intake service center.....	141
probation conditions for manslaughter.....	292
probation for certain class B or C felonies.....	140
prostitution; motion to vacate conviction.....	216
second time drug offenders; sentencing.....	140
Detention credit not given for separate unrelated felony conviction.....	50
Offender reentry office.....	76
Probation services fees for deferral pleas.....	295
System improvements.....	139
Wellness center (puuhonua); creation.....	117
Work release pilot program.....	117

PROCUREMENT

Administrative proceedings for protests.....	173
Community-based economic development program grants exemption.....	240

Purchases of service; provider participation in delivery plan	4
Small purchase procedures for public contracts	173
Statistics for solicitations and awards protests	173

PROFESSIONS AND OCCUPATIONS

Accountants' peer review process; establishment	324
Athletic trainers registration act	198
Contractors	
payments to subcontractors	260
unlicensed contracting	244
Dental hygienists' display of license required	81
Engineers, architects, and surveyors; land surveying and landscape architect definitions	79
Insurance entities; licensing and regulation	251
Licenses	
licensure by endorsement or reciprocity for nonresident military spouses	247
licensure by military training, experience, or education	248
Mortgage loan originators; registration and licensure exemption	252
Mortgage servicer; registration with Nationwide Mortgage Licensing System.	245
Out-of-state collection agency; exempt designation	52
Pharmacists	
continuing education requirements	24
influenza vaccination training	42
volunteer medical assistance and emergency disaster response personnel.	265
Real estate brokers and salespersons; good faith reliance on information from third parties	257
Telecommunications and cable industry information reporting	259
Veterinarians; license renewal and continuing education requirements	306

PUBLIC ASSISTANCE

see HUMAN SERVICES

PUBLIC CONTRACTS

Administrative proceedings for protests	173
Airport concession contract extension agreement	46
Community-based economic development program grants exempt from procurement code	240
Cost sharing for utility work	70
Information technology procurements; status reports	222
Small purchase procedures	173
Telephone-based audible information access service for government information	199

PUBLIC EMPLOYMENT

Appointed officers; residency requirement waiver	115
Collective bargaining agreements	
favored nation provisions	
units 2, 3, 4, 6, and 13	111
units 2, 3, 4, and 8	109
units 2, 3, 4, and 13	110
health fund costs	
unit 6	111
unit 7	112
unit 8	109
units 2, 3, 4, and 13	110
unit 1 settlement agreement	106 §4(21)
Community rehabilitation programs; reporting requirements repealed	44

Criminal history record checks	
county employees.....	299
rap back program.....	210
Department heads, deputies, and assistants; salary reduction period clarified.....	48
Employees' retirement system	
allowance on service retirement for water safety officers.....	153
board members.....	72
calculation of benefits for members hired after June 30, 2012.....	152
non-base pay increases; payment by employers for additional costs.....	153
ordinary disability for class H members.....	153
Health benefits trust fund	
credited service.....	36
post-employment benefits trust; establishment.....	304
retiree contribution rate adjustment date change.....	38
unfunded liability study.....	106 §4(22)
Labor relations board staff appointments.....	49
Retaliatory discrimination relief.....	294
Transportation benefit program.....	45
Workers hired to work on vacant housing units; civil service exemption.....	159
Workforce demographic profile.....	16

PUBLIC LANDS

Conveyance of certain parcels from Kakaako makai to	
office of Hawaiian affairs.....	15
Easement requirement exemption for legacy land acquisitions.....	284
Geothermal development.....	97, 193
Lands accreted after May 20, 2003.....	56
Leases; rental of airport land for non-aeronautical purposes.....	47
Legacy land conservation commission; natural area reserves system	
commission's representative.....	82
Public land development corporation	
development rights.....	282
school facilities special fund.....	309
stadium facilities special fund.....	282
wellness center (puuhonua) for incarcerated persons.....	117
Transfer of parcels from land and natural resources to	
public land development corporation.....	282

PUBLIC SAFETY

Agency defined.....	9
Automated victim information and notification system.....	190
Federal reimbursement maximization special fund.....	77
Intake service center pre-sentence diagnosis and report.....	51
Justice reinvestment initiative.....	106 §15(13)
Offender reentry commission members.....	76
Offender reentry office; establishment.....	76
Prisons, <i>see PRISONS AND PRISONERS</i>	
Reentry intake service center pretrial assessments and supervision.....	141
Telecommunication service providers; emergency disclosures.....	94
Wellness center (puuhonua) for incarcerated persons.....	117
Work release pilot program for incarcerated persons.....	117

PUBLIC SERVICE COMPANY TAX

Interisland undersea transmission cable system surcharge.....	165
---	-----

PUBLIC UTILITIES

Condominiums; separate meter installations.....	18
Customer surcharge for cost recovery of power purchase agreements.....	55

Electric utility companies; cost recovery of power purchase agreements.....	55
Energy plans	
electric reliability standards.....	166
stabilization of electric utility rates.....	99
Enhanced 911 services; public safety agency designation.....	9
Interisland undersea transmission cable system.....	165
One call center.....	196
Telecommunications carriers	
basic exchange service rate limit.....	74
special purpose revenue bonds issued for serving general public.....	242
Water service; preferential rates for agricultural activities.....	232

REAL PROPERTY

Conveyance into trust.....	209
Deregistering fee time share interest procedures.....	121
Disaster emergency access; liability exemption.....	291
Discrimination in transactions.....	85
Fee time share interest recording requirements.....	121
Foreclosures	
association alternate power of sale foreclosure process.....	182
distressed property consultant prohibitions; criminal penalties.....	183
mortgage rescue fraud consumer education.....	183
Mortgage servicer registration with Nationwide Mortgage Licensing System.....	245
Rights of reciprocal beneficiaries on status change to civil union.....	267

RECIPROCAL BENEFICIARIES

Accrued rights.....	267
Change to civil union relationship.....	267
Property conveyed into trust.....	209

REFUSE AND GARBAGE

Electronic device recycling task force.....	78
Used motor vehicle tires task force.....	271

REPORTS OR STUDIES

Accounting and general services	
distribution of electronic publications.....	63
information technology procurements; status.....	222
social security numbers in electronic voter registration records.....	225
statewide enterprise resource planning.....	106 §6(3)
Agriculture	
agriculture and aquaculture industries task force.....	114
plant quarantine detector-dog program.....	128
Attorney general	
agriculture and aquaculture industries task force.....	114
Auditor	
Hawaiian home lands; homestead services audit.....	106 §15(7)
higher education act report.....	132
Budget and finance	
health benefits; unfunded liability.....	106 §4(22)
one call center.....	196
overpayment reports.....	106 §15(15)
overtime and compensatory time reports.....	106 §15(14)
Business, economic development, and tourism	
spaceport license application status.....	101
venture accelerator funding program; Hawaii strategic development corporation.....	170

Commerce and consumer affairs	
basic health program; feasibility study	254
professional and vocational licensing; military education or experience equivalency.....	248
Education	
concussion awareness program	197
early learning system; status of implementation plan for development.	178
Hawaii state library foundation trust fund	308
home-to-school transportation costs	106 \$4(11)
operating budget expenditures	106 \$15(9)
per pupil allocations.....	106 \$15(10)
Hawaiian home lands	
homestead services division	106 \$15(7)
housing projects; funding	175
trust funds; procurement code flexibility	174
Health	
childhood obesity prevention task force; findings and recommendations.	269
electric device recycling task force.	78
five-year financial plan	106 \$4(10)
tobacco settlement special fund; annual budget report.....	106 \$4(9)
used motor vehicle tires task force.....	271
Human resources development	
community rehabilitation programs; reporting requirements repealed.	44
workforce demographic profile.....	16
Human services	
Hawaii interagency council on homelessness.....	105
interim assistance reimbursement agreement.	106 \$15(5)
medicaid buy-in program for working individuals with disabilities task force	200
nursing facility acuity of medicaid recipients.	211
public housing development agreements.	164
Labor and industrial relations	
boiler and elevator special fund.....	103
disability and communication access board; building plan review fee and fee schedule	277
Land and natural resources	
aha moku advisory committee recommendations.	288
Honouliuli park site recommendations.	235
Makahala valley flood study	283
ocean and beach users safety rules	195
school facilities special fund.....	309
watershed management initiatives	106 \$15(17)
west Maui ocean recreation management area advisory committee annual report.....	194, 195
ocean safety rules.....	195
Public safety	
justice reinvestment initiative	106 \$15(13)
work release pilot program for incarcerated persons.	117
Taxation	
tax credits; electronic format information, etc.....	189
tax review commission	181
Transportation	
driver's license reciprocity committee	314
noxious invasive pest program	106 \$4(8)
rental motor vehicle customer facility charge special fund; airport projects	106 \$14
safe routes to school program	317
zipper lane extension feasibility study.....	320
University of Hawaii	
Hawaii western interstate commission for higher education.....	137

University of Hawaii—cont'd

John A. Burns school of medicine

expenditure reports.....	2, 106 §4(14)
financial plan.....	2
Hawaii health corps revolving fund.	187
physician workforce assessment fee.....	186
repair and maintenance backlog plan.	106 §15(11)
revenue source identifications.....	106 §15(12)

RETIREMENT

see PUBLIC EMPLOYMENT, Employees' retirement system

SALES

Aerial luminaries.	319
Bear gallbladders or bile.	126
Herbal incense or bath salts (synthetic hallucinogens).	29
Liquor sales by manufacturer license holder.	302
Pseudoephedrine purchase tracking.	119
Retail intrastate rates by telecommunications providers.....	74
Secured transactions.	33

SCHOOLS

see EDUCATION

SECURITIES

General amendments.	54
Secured transactions.	33

SEXUAL OFFENSES

Crimes against children

aggravated circumstances.	28
child pornography; possession.	212
false accusations.....	68
limitation of actions.....	68
promoting minor-produced sexual images ("sexting").	213

SHERIFFS

Service of process; authorized persons.	142
--	-----

SMOKING

Reduced ignition propensity cigarette program.	233
Tobacco settlement special fund	
annual budget report.....	106 §4(9)
childhood obesity task force appropriation.....	269
university of Hawaii; appropriation of moneys.....	2

SPORTS

Athletic trainer registration act.....	198
Concussion awareness program; development and guidelines.....	197
Light shielding fixture installation requirements for athletic facilities.	287
Mixed martial arts defined.	102
Stadium facilities special fund.	282

STATE DEPARTMENTS

Board meetings by interactive conference technology.	202
Criminal history checks; rap back program.....	210

Department heads, deputies, and assistants	
residency requirement waiver.....	115
salary reduction period clarified.....	48
Directed leave without pay program.....	106 §§4(15), (16)
Electronic publication notifications.....	63
Emergency administrative rules; conditions for adoption.....	149
Information released from health department.....	86
Light shielding fixture installation requirements.....	287
Office of information practices decision; agency appeal.....	176
Overpayment reports.....	106 §15(15)
Overtime and compensatory time reports.....	106 §15(14)
Personal services budget journal details.....	106 §15(16)
Pretax transportation benefit program.....	45

STATE PLAN

Climate change priority guidelines.....	286
Geothermal development.....	193

STATUTES

Agriculture and aquaculture industries task force.....	114
General technical revisions.....	34

STREETS AND ROADS

Highway right-of-way; cost sharing for utility work.....	70
Light shielding fixture installation requirements.....	287
Safe routes to school program.....	317

SUNSET AND REPEAL

Amendment of sunset or repeal	
salary reduction for public officers, legislators, and judges clarified.....	48
Extension of sunset or repeal	
energy systems development special fund.....	151
fuel tax on naphtha.....	188
Hawaiian home lands funding of housing project construction.....	175
offender reentry commission.....	76
one call center.....	196
physician workforce assessment fee.....	186
safe harbor agreements and habitat conservation plans.....	145
special purpose revenue bonds	
Hawaii Preparatory Academy.....	154
Honolulu Seawater Air Conditioning.....	155
Queen's Health Systems.....	228
unemployment compensation benefits.....	6
Temporary programs and provisions	
affordable housing credits.....	98
airport concession contract extension agreement.....	46
burial of military service members and dependents.....	307
electric vehicle incentives.....	168
expedited bridge construction projects.....	218
fire sprinkler requirement in certain dwellings or buildings prohibited.....	83
Hawaiian home lands trust funds; procurement code flexibility.....	174
hospital sustainability program fee.....	217
licensure by military training, experience, or education.....	248
liquor commission's noise control pilot project.....	297
medicaid buy-in program for working individuals with disabilities	
task force.....	200
nursing facility sustainability program.....	156
prisons and prisoners; system improvements.....	139
registered and licensed practical nurse; definition.....	255

Temporary programs and provisions—cont'd	
tobacco settlement special fund.	2
transient accommodations	
local contact information.	326
tax distribution.	243
unemployment compensation; special assessment.	6
used motor vehicle tires task force.	271
west Maui ocean recreation management area advisory committee.	194, 195
workers hired to work on vacant housing units; civil service exemption.	159
work release pilot program for incarcerated persons.	117
Temporary provisions made permanent (sunset repealed)	
center for nursing fee assessment.	53
death benefit amount for public assistance recipients.	62
environmental assessment exemptions for secondary actions.	312
procurement protests and disputes.	173
psychotropic medication coverage for QUEST and medicaid members.	120

SUPREME COURT

Retired judges; temporary appointments.	SB650
Service of process; authorized persons.	142

TAXATION

Administrative appeals officer.	189
Business registration amendments.	58
Claim of refund or credit for underpayment application.	185
Estate and generation-skipping transfer tax.	220
Motor vehicle tax lien and encumbrance record.	67
Staff support appropriation.	189
Tax clearance fees.	180
Tax credit reports.	189
Tax review commission; duties.	181
Transient accommodations' local contact information.	326

TELECOMMUNICATIONS

Board meetings by interactive conference technology.	202
Clearcom, Inc.; special purpose revenue bonds.	242
Computer fraud and unauthorized access.	293
Electronic publication notifications.	63
Enhanced 911 services; definitions.	9
Harassment by cyberbullying.	192
Interisland undersea transmission cable system.	165
Mobile electronic device use while operating commercial vehicle.	311
Promoting minor-produced sexual images ("sexting").	213
Public utilities commission; basic exchange service rate limit.	74
Service providers	
emergency disclosures.	94
special purpose revenue bonds.	242
Telecommunications and cable industry information reporting.	259

TIME SHARING

Deregistering fee time share interest procedures.	121
Fee time share interest recording requirements.	121

TOURISM

Agricultural tourism authorization.	329
Tourism special fund	
allocation increase from transient accommodations tax.	171
expanded visa program for visitors.	171

TRANSIENT ACCOMMODATIONS TAX

Convention center enterprise special fund; allocations to on fiscal year basis.	243
Local contact information.	326
Tourism special fund; allocation increase.	171

TRANSPORTATION

Airports, <i>see AIRPORTS AND AIRCRAFT</i>	
Civil identification (state ID) cards; issuing agency.	310
Electric vehicle incentives.	168
Expedited bridge construction projects.	218
Fire boat; maintenance and operation.	69
Interisland transportation of live wild or feral deer.	144
Motor vehicles, <i>see MOTOR VEHICLES</i>	
Noxious invasive pest program; budget report.	106 §4(8)
Public employees; pretax transportation benefit program.	45
Safe routes to school program; establishment.	317
State harbors civil violations system.	313
Violation of rules on harbor property; fines and penalties.	313
Zipper lane extension feasibility study.	320

TRUSTS

Uniform adult guardianship and protective proceedings jurisdiction act.	236
--	-----

UNCLAIMED PROPERTY

Remittance of unclaimed property.	229
--	-----

UNEMPLOYMENT BENEFITS

see EMPLOYMENT SECURITY

UNITED STATES

Federal reimbursement maximization special fund.	77
Memorandum of understanding with department of defense.	65

UNIVERSITIES AND COLLEGES

Distribution of unclaimed dead body for research.	75
Hawaii Pacific University; special purpose revenue bonds.	305
Housing for students and faculty; exempted from landlord-tenant code.	43
Scholarships; campaign fund uses.	20

UNIVERSITY OF HAWAII

Bee hive research.	129
College-credit equivalency program; armed forces experience credits.	12
Community college apprenticeship programs; instructor training.	14
Hawaii health systems corporation.	16
Hawaii western interstate commission for higher education.	137
Higher education act report.	132
John A. Burns school of medicine	
expenditure reports.	2, 106 §4(14)
financial plan report.	2
Hawaii health corps establishment.	187
physician workforce assessment fee extension.	186
Natural energy institute.	151
Pacific International Space Center for Exploration Systems (PISCES);	
transfer of office.	169
Repair and maintenance backlog plan.	106 §15(11)
Revenue bonds, issuance of.	3
Revenue source identification report.	106 §15(12)

Scholarships; campaign fund uses.	20
Tobacco settlement special fund.	2
Uluulu: Henry Kuualoha Giugni moving image archive of Hawaii.	90

VETERINARIANS

Licenses; renewal and continuing education requirements.	306
---	-----

VICTIMS

Automated victim notification system.	190
Restitution.	139
Sexual offenses against minors; limitations of action.	68
Victim witness assistance program.	322

VITAL STATISTICS

Information released to government agencies.	86
---	----

VOLUNTEERS

Ethics code exemption for task for members.	208
Medical assistance and emergency disaster response by pharmacists.	265

WATER RESOURCES

Honokowai water system.	106 §6(3)
Preferential service rates for agricultural activities.	232
Special purpose revenue bonds; dams and reservoirs.	147, HB2594
Tax exemption for nonprofit public water system companies.	184

WILDLIFE

Endangered or threatened species; habitat conservation.	145
Wild or feral deer; interisland transport.	144

WOMEN

Informed consent for pelvic exams.	136
Mammogram referrals.	92

WORKERS' COMPENSATION

Appeals board hearing notices.	261
Attorney's fees assessed for workers' compensation claims without reasonable grounds.	234
Domestic services; employment exemption.	157
Domestic services for disabled individuals; employment exemption.	158
Motor vehicle insurance; covered loss deductible.	32
Notice of employer's insurance.	262